



सीमा शुल्क आयुक्त -आयात) का कार्यालय, न्यू कस्टम हाउस, बल्लार्ड एस्टेट,
मुंबई -400001

OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT-I)
NEW CUSTOM HOUSE, BALLARD ESTATE,
MUMBAI 400001

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File No.: GEN/ADJ/ADC/1250/2024-GR-4-O/O COMMR-CUS-IMP-I-ZONE-I-MUMBAI

PASSED BY: DR. PRASHANT CHAUHAN
JOINT COMMISSIONER OF CUSTOMS
(IMPORT-I), ADJUDICATION CELL, NCH

Date of Order: 29.11.2024

Date of Issue: 29.11.2024

O-i-O. No. : 43/JC/PC/ADJ./2024-25

DIN No.- 2024117700000000B327

Name of the Parties/Noticees:- M/s Heavy Steel Impex

ORDER-IN-ORIGINAL /मूलआदेश

1. यह प्रति उस व्यक्ति के उपयोग के लिए निःशुल्क दी जाती है जिसे यह जारी की गई है।

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2. इस आदेश के खिलाफ अपील इस आदेश के संचार की तारीख से साठ दिनों के भीतर और सीमाशुल्क अधिनियम, 1962 की धारा 128(1) के तहत सीमाशुल्क आयुक्त) अपील (न्यूकस्टमहाउस, बलार्डएस्टेट, मुंबई400001 के समक्ष होगी। मांग किए गए शुल्क के 7.5% का भुगतान जहां शुल्क या शुल्क और जुर्माना विवाद में है या जुर्माना जहां अकेले दंड विवाद में है।

An appeal against this order shall lie before the Commissioner of Customs (Appeals), New Custom House, Ballard Estate, Mumbai 400001 under Section 128(1) of the Customs Act, 1962 within Sixty days from the date of communication of this order and on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty where penalty alone is in dispute.

3. अपील सीमाशुल्क) अपील (नियम 1982 में प्रदर्शित फॉर्म सी-ए.1 में दो प्रति में की जानी चाहिए। अपील रुपये- / 1.50 के न्यायालय फीस स्टॉप तथा इस आदेश या आदेश की प्रति के साथ संलग्न होनी चाहिए। यदि आदेश की प्रति संलग्न की जाती है तो इसमें भी न्यायालय फीस अधिनियम 1970 की अनुसूची 1 में प्रदर्शित रुपये -/1.50 की न्यायालय फीस स्टॉप भी होना चाहिए।

The appeal should be in duplicate and should be filed in Form CA – 1 appeared in Custom (Appeals) Rule, 1982. The appeal should bear a court fee stamp of Rs. 1.50 paise paid only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should

also bear a court fee stamp of Rs. 1.50 paise only as prescribed under Schedule 1, item 6 of the Court Fees Act, 1970.

4. इस निर्णय या आदेश के खिलाफ अपील करने वाला कोई भी व्यक्ति, अपील लंबित होनेपर, सीमाशुल्क अधिनियम, 1962 की धारा 129 ईके तहत उपरोक्त पैरा 2 के अनुसार राशि जमा करेगा, अपील के साथ इस तरहके भुगतान का प्रमाण प्रस्तुत करेगा, जिसमें विफलरहने पर अपील की जास कती है।सीमाशुल्क अधिनियम, 1962 की धारा 128(1) के प्रावधानों का अनुपालन न करने के कारण खारिज कर दिया गया।

Any person appealing against this decision or order shall, pending the appeal, deposit the amount as per Para 2 above under Section 129 E of the Customs Act, 1962 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 the Section 128(1) of the Customs Act, 1962.

5. यदि आदेश के विरुद्ध अपील दायर की जाती है, तो अपील संख्या और दिनांक की सूचना निर्णय अधिकारी के कार्यालय में, आयुक्त (अतिरिक्त/संयुक्त) सीमा शुल्क, आयात-I, दूसरी मंजिल, नया सीमा शुल्क भवन, बल्लार्ड एस्टेट, फोर्ट, मुंबई-400001 को दी जानी चाहिए।

If an appeal is filed against order, the appeal number and date should be intimated to the Office of the Adjudicating Authority at Office of Addl./Joint Commissioner of Customs, Import-I, 2nd Floor, New Customs House, Ballard Estate, Fort, Mumbai-400001.

Brief Facts of the case

Intelligence developed by the officers of the Mumbai Zonal Unit of the Directorate of Revenue Intelligence indicated that several importers of flat cold rolled stainless steel products (coils/sheets/plates) were evading payment of anti-dumping duty either by mis-declaring the Country of Origin or by mis-declaring the size, nature, and quality of the goods.

1.1 Notification No.14/2010-Customs dated 21.12.2010 imposes anti-dumping duty on Flat Cold Rolled Products of stainless steel falling under heading 7219 of the First Schedule to the Customs Tariff Act, 1975, which originate in or are exported from the People's Republic of China, Korea, European Union countries, South Africa, Taiwan (Chinese Taipei), Japan, Thailand, and the United States of America (USA) at various rates mentioned in the said notification subject to the condition that the goods are of a width ranging between 600 mm to 1230 mm of all series and of a thickness of up to 4 mm.

1.2 Intelligence also suggested that in addition to mis-declaring the Country of Origin, the importers were also resorting to mis-declaration of width (width declared to be above 1250 mm or below 600 mm) of the products so imported. Further, the thickness in many cases was being deliberately mis-declared as more than 4 mm.

1.3 The intelligence also indicated mis-declaration in the nature of the goods in as much as Cold Rolled (CR) products were being mis-declared as Hot Rolled (HR) products so that the goods escape levying of anti-dumping duty. The Custom House Agent, who facilitated clearances of these mis-declared consignments, was M/s Durga International (hereinafter referred to as CHA).

2. On the basis of the above intelligence, the residential and office premises of Shri Rajesh Nakhua, partner of the CHA firm, were searched on 28.10.2010 and documents relevant to the investigations were taken over. His statement was recorded on 28.10.2010 wherein he inter alia stated that;

- He was responsible for the day-to-day operations of the CHA firm.
- He was aware that anti-dumping duty was leviable on the imports of Cold Rolled Flat Products of stainless steel falling under heading 7219 and originating in or exported from People's Republic of China, Korea, European Union countries, South Africa, Taiwan (Chinese Taipei), Japan, Thailand, and United States of America (USA).

2.1 When asked specifically about evasion of anti-dumping duty on the imports of Flat Cold Rolled Products of Stainless Steel, Shri Rajesh Nakhua identified M/s Heavy Steel Impex (IEC No. 0309022006) as one of the importers who had mis-declared the description/dimensions of the product or the country of origin to evade payment of anti-dumping duty. He undertook to pay the anti-dumping duty, if any, forthwith.

3. On the basis of the statement of Shri Rajesh Nakhua, one consignment imported under Bill of Entry No. 973377 dated 27.10.2010 by the importer was identified and detained on 23.11.2010 for ascertaining the nature of the import cargo.

4. The consignment kept on hold, was examined under panchnama on 23.11.2010 at Container Freight Station M.O.D, Mumbai Port in the presence of the CHA. Two coils, totally weighing 2791 Kgs (1351 Kgs + 1440 Kgs) where the width declared as 1300 mm, were actually found to be of 1250 mm width of grade 304. Also, seven other coils totally weighing 6430 Kgs, in respect of which the grade was declared as 304, were actually found to be of grade 316. The PMI test of the goods confirmed that the grade of these seven coils was 316.

5.1 Shri Mohanlal Meyachand Jain, the proprietor of M/s Heavy Steel Impex, in his statement recorded on 02.12.2010 under the provisions of section 108 of the Customs Act, 1962, inter alia, stated that;

- He was into import and trading of stainless steel sheets and coils of 304 and 316 of various widths mainly 900 mm to 1500 mm.
- He imported stainless steel coils/sheets of 304/316 grades of various widths from three foreign-based suppliers;
- Their main overseas suppliers were

- i. M/s Dinowic Pte. Ltd., Singapore,
 - ii. M/s Everlasting, China, and
 - iii. M/s R.M. Creations, America;
- He used to contact the representatives of these firms on phone for the supply of the material;
 - He had utilized the services of M/s Durga International, the CHA, for clearances of his import consignments.
 - Most of the imports took place from Mumbai Port; some imports were affected from Nhava Sheva Port too.
 - He had imported 18 containers of stainless steel coils/sheets so far.

5.2 On being asked about the consignment imported under Bill of Entry No. 973377 dated 27.10.2010, Shri Mohanlal Meyachand Jain stated that;

- He had ordered 28 tonnes of Stainless Steel coils/sheets from M/s Dinowic Pte. Ltd., Singapore;
- He had placed an order with one Shri Navneet Kumar, a Singapore-based supplier, and that goods were loaded from Antwerp, Belgium, and the Country of Origin was Germany;
- He had instructed Shri Navneet Kumar, the overseas supplier, to send two coils of 1250 mm width but to send with the invoice and packing list showing the width of coils as 1500 mm to avoid the payment of anti-dumping duty;
- He also instructed him to declare the grade of 7 other coils as 304 though the coils were of 316 grade, which was a costlier variety;
- Bill of Entry was filed for clearance of the same at Mumbai Port;
- The goods were declared as "SS Secondary Defective CR SS Coil 304 grade" width above 1500 mm. The copies of the relevant commercial invoice, packing list, and bill of lading were submitted.

5.3 He admitted that due to the mis-declaration of width, anti-dumping duty was evaded in respect of 2 (two) stainless steel coils as the width fell between 600 mm to 1250 mm; and due to the mis-declaration of grade as 304 instead of 316, in the case of 7 coils there was evasion of customs duty also.

6. He voluntarily submitted Demand Draft nos. 009189 and 009188 respectively, both dated 25.11.2010, for an amount of Rs. 2,30,000/- towards anti-dumping duty liability and an amount of Rs. 71,000/- towards the differential customs duty. These Demand Drafts were deposited on a challan at New Custom House, Mumbai, under Cash No. 91 dated 08/12/2010. The detained goods were released provisionally pending finalization of investigations on execution of a Provisional Duty Bond and furnishing security in the form of Bank Guarantee dated 03/02/2011 for Rs. 3,27,500/- (Three Lakhs twenty-seven thousand five hundred only) issued by HDFC Bank, Null

Bazar Branch, with validity of one year, not to be revoked without written consent of the government during its currency.

7. Earlier, 12 consignments had been imported in the month of March 2010; Shri Mohanlal Meyachand Jain was once again summoned to DRI office, and his further statement was recorded on 11.10.2011. He reiterated the submissions made by him in his statement dated 02.12.2010. When asked about the imports of M/s Heavy Steel Impex prior to and after 27.10.2010, he stated that after October 2010, he had not imported any consignments. Prior to October 2010, they had imported 12 consignments of CRSS/HRSS coils/sheets. He stated that they had not resorted to any mis-declaration in respect of any of the imports in the past.

8. Notification No. 38/2009-Customs, dated 22/04/2009, had imposed provisional anti-dumping duty on Flat Cold Rolled Products of Stainless Steel of the width of 600 mm or more of all series with thickness of up to 4 mm, but did not include cold rolled stainless steel in coil having:

- a combination of thickness above 2 mm and, width above 1500 mm for use in fabrication, and AISI 420 High Carbon (0.82%-0.40%) grade falling under heading 7219 and originating in, or exported from the People's Republic of China, Korea, European Union, South Africa, Taiwan (Chinese Taipei), Japan, Thailand, and United States of America (USA). This notification was effective up to 21.10.2009.

9. Notification No. 14/2010-Customs dated 20.12.2010 imposed final anti-dumping duty on Flat Cold Rolled Products of Stainless Steel [of the width of 600 mm up to 1250 mm of all series further worked than Cold Rolled (cold reduced) with thickness of up to 4 mm], falling under heading 7219 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating, or exported from the People's Republic of China (China PR), Korea RE, European Union, South Africa, Taiwan (Chinese Taipei), Japan, Thailand, and United States of America (USA). The details of description of goods, Country of Origin, Country of Export, Producer, Exporter, Specification in series, Amount, Unit and Currency as given in the table to the notification mentioned above.

10.1 Goods covered by Bill of Entry No. 973377 dated 27.10.2010, were imported from M/s Dinowic Pte. Ltd, Singapore. The port of loading was Antwerp. The Country of origin declared on the Bill of Entry was Germany (country in the European Union). As per invoice No. 100869DW dated 09.09.2010, 19 packages weighing 27.618 metric tonnes declared as SS Secondary Defective CR SS coil, grade 304 of width above 1500. The rate indicated on the invoice was 2320 US\$ per metric tonne CIF. The goods were covered by Bill of Lading BE2397561 dated 14.09.2010.

10.2 The goods were assessed by customs at the rate of 2450 US\$ per metric tonne CIF. The assessable value of the goods was Rs. 31,16,337.79. Customs Duty of Rs. 8,36,696.00 and interest of Rs. 5,159.00 was paid on 16.11.2010. The Customs Duty was paid at the rate of 10% BCD, 2% Edu Cess, 1% higher Edu Cess, 10% CVD, 2% Edu Cess, 1% higher Edu Cess, and 4% SAD. The

description of the goods on the Bill of Entry was "Cold Rolled Stainless Steel Secondary Defective Coils/Sheets, Grade 304/304L (width above 1265 mm). The goods were examined under panchnama on 23.11.2010.

10.3 Two coils, grade 304, having net weight 2.791 (1.351 & 1.440) metric tonnes were found to have a width of 1250 mm instead of 1501 mm declared on the packing list for the coils. The thickness was however 1.96 mm and 1.97 mm as declared. It appeared that these goods attracted anti-dumping duty under Notification no. 14/2010-Customs dated 20.02.2010 at the rate of US\$ 1646.32/M.T. as per serial number 6 of the table.

10.4 The examination of the consignment also revealed that seven coils totally weighing 6.430 MT (0.580, 0.695, 0.705, 1.420, 1.195, 0.745, and 1.090) were mis-declared as having grade 304 instead of 316. The PMI test of the goods done on 23.11.2010 confirmed that the grade of these seven coils was 316. The composition includes mainly Nickel chromium and the presence of molybdenum besides other trace elements. The Chromium content is higher in grade 304 but lower in nickel content than grade 316. However, molybdenum in 316 is 2 to 3 percent whereas in 304 it is nil or in trace quantity. Further, Cold Rolled Stainless Steel Flat Products of grade 304 are cheaper than grade 316. By declaring the grade of the said goods as 304, the importer had undervalued the said goods.

10.5 As per the Bill of Entry, the seven coils weighing 6430 Kgs were valued at Rs. 7,18,359.60 CIF (Assessable value Rs. 7,25,543.29) for the purposes of assessment. It was admitted by Shri Jain that the value of grade 316 Flat CRSS product was US\$ 3400/MT. Accordingly, the value of the seven coils works out to Rs. 9,96,907.20 CIF (Assessable value Rs. 10,06,876.27). The mis-declaration of grade of the seven coils caused under-reporting of the value by Rs. 2,78,547.60 CIF (Assessable value Rs. 2,81,333.07) at import.

11. From the foregoing, it appears that:

(i) In respect of the two coils, weighing 2.791 MT (1.351 & 1.440), the importer has mis-declared the width as more than 1500 MM instead of 1250 MM, to evade payment of anti-dumping duty leviable in terms of Notification no. 14/2010-Cus dated 20.02.2010 issued under the provisions of Section 9A of the Customs Tariff Act, read with the Customs Tariff (Identification, Assessment, and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.

(ii) In respect of seven other coils, totally weighing 6.430 MT, having declared value of Rs. 6,80,242.56 CIF (value for assessment Rs. 7,18,359.60 CIF), the importer has knowingly mis-declared the grade as 304 in place of 316, in order that the lower value is taken for purpose of assessment by customs appraising officers, thus evading payment of appropriate amount of customs duty under the provisions of the Customs Tariff Act, 1962.

12. Thus, it also appears that:

(i) The anti-dumping duty of Rs. 2,09,526.48 and the differential customs duty of Rs. 75,534.24 payable on the goods referred to above at para 11 is recoverable under Section 28 of the Customs Act, 1962 read with section 9A(8) of the Customs Tariff Act, 1975 along with applicable interest under Section 28AA of the Customs Act, 1962.

(ii) Mis-declaring the width of goods valued at Rs. 3,11,810.52 CIF (Assessable value Rs. 3,14,928.62) with intent to evade anti-dumping duty and also mis-declaring the grade of the goods of admitted value of Rs. 9,96,907.20 CIF (Assessable value Rs. 10,06,876.27) with intent to evade payment of appropriate customs duty has rendered the goods liable for confiscation under Section 111(m) of the Act, 1962.

(iii) Shri Mohanlal Jain, proprietor of M/s Heavy Steel Impex, is liable for penal action under Section 114A of the Customs Act, 1962.

13. M/s Heavy Steel Impex and Shri Mohanlal Jain, proprietor of M/s. Heavy Steel Impex, Mumbai, were called upon to show cause vide SCN dated 10.02.2012 as to why:

(a) Anti-Dumping Duty amount of Rs. 2,09,526/- (Rupees Two Lakh Nine Thousand five hundred twenty-six only), payable on the two coils valued at Rs. 3,11,810.52 CIF imported and cleared under bill of entry no. 973377 dated 27.10.2010 should not be demanded and recovered from them under Section 28 of the Customs Act, 1962 read with the provisions of Section 9A (8) of the Customs Tariff Act, 1975 along with applicable interest under Section 28AA of the Customs Act, 1962.

(b) The value of Rs. 7,18,359.60 CIF (Declared CIF Rs. 6,80,242.56) of the seven coils weighing 6.430 MT where grade was mis-declared as 304 instead as 316, imported and cleared under Bill of Entry no. 973377 dated 27.10.2010 should not be rejected in terms of Rule 12 of the Customs Valuation Determination of Value of Imported Goods Rules, 2007, and reassessed/re-determined at Rs. 9,96,907.20 in terms of Rule 9 ibid on the basis of the admission made by Shri Mohanlal Jain of M/s Heavy Steel Impex.

(c) Differential Customs Duty amounting to Rs. 75,534/- (Rupees Seventy-five Thousand five hundred thirty-four only) payable on the seven coils of 6.430 MT imported and cleared under Bill of Entry no. 973377 dated 27.10.2010 should not be demanded and recovered under proviso to Section 28 of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

(d) The said mis-declared goods totally valued at Rs. 13,08,717.72 (Rs. 9,96,907.20 and Rs. 3,11,810.52) should not be confiscated under Section 111(m) of the Customs Act, 1962.

(e) Penalty should not be imposed on them under Section 112(a) and/or Section 114A of the Customs Act, 1962.

(f) The amount of Rs. 2,30,000/- deposited by them towards their Anti-Dumping Duty liability and Rs. 71,000/- deposited by them should not be appropriated towards the duties of customs demanded above.

14. In view of the above, the importer i.e. M/s Heavy Steel Impex and Shri Mohanlal Jain, proprietor of M/s. Heavy Steel Impex, Mumbai were issued a Show Cause Notice No. **DRI/MZU/G/INV-18/10-11** dated 10.02.2012. Subsequently, the said show cause notice was adjudicated vide Order-in-Original No.628/2020-21/ADC/NS- III/JNCH/CAC dated 15.03.2021 by the Addl. Commissioner of Customs, NS- III JNCH (hereinafter referred to as the "Original Authority (OA)") Group-IV/JNCH. and passed the following order:-

- i. Confirmed the demand and recovery of Anti-Dumping Duty amounting to **Rs. 2,09,526/-** (Rupees Two Lakh Nine Thousand Five Hundred Twenty-Six Only) payable on the two coils valued at **Rs. 3,11,810.52 CIF**, imported and cleared under Bill of Entry No. 973377 dated 27.10.2010, under Section 28 of the Customs Act, 1962, read with the provisions of Sections 9A(8) of the Customs Tariff Act, 1975, along with applicable interest under Section 28AA of the Customs Act, 1962.
- ii. Rejected the value of Rs. 7,18,359.60 CIF (Declared CIF Rs. 6,80,242.56) of the seven coils weighing 6.430 MT where grade was mis-declared as 304 instead as 316, imported and cleared under Bill of Entry no. 973377 dated 27/10/2010 in terms of Rule 12 of the Customs Valuation Determination of Value of Imported Goods Rules 2007 and order it to be reassessed/re-determined at **Rs. 9,96,907.20** in terms of Rule 9 ibid.
- iii. Confirmed the demand and recovery of Differential Customs Duty amounting to **Rs. 75,534/-** (Rupees Seventy-Five Thousand Five Hundred Thirty-Four Only), payable on the seven coils of 6.430 MT imported and cleared under Bill of Entry No. 973377 dated 27.10.2010, under the provisions of Section 28 of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.
- iv. **Since the goods were liable for confiscation but were not physically available, refrained from imposing redemption fine** on the impugned goods.
- v. Imposed a Penalty of Rs. 30,000/- (Rupees Thirty Thousand Only) under Section 112(a)/Section 114A of the Customs Act, 1962.
- vi. Ordered for the appropriation of the amount of Rs. 2,30,000/- & Rs. 71,000/- deposited by the importer towards their Anti-Dumping Duty and Differential Customs Duty liabilities, towards the duties of customs confirmed in this order.

15. Further, in this regard, Reviewing Authority in the exercise of powers under Section 129D of the Customs Act, 1962, reviewed the aforesaid order of the Original Adjudicating Authority (OA) vide Review Order No. 60/2021-22 dated 24.05.2021 wherein the Deputy Commissioner of

Customs, Group-IV, NS-III, JNCH, Mumbai Zone-II was directed to file an appeal before the Commissioner of Customs (Appeals), Mumbai-II, on the following grounds:

GROUND OF APPEAL

(i) The Ld. Original Authority *had passed the impugned Order-in-Original without going through the Corrigendum to subject SCN issued on 29.03.2016 wherein jurisdictional adjudicating authority had been changed from JC/JNCH to Joint/Additional Commissioner of Customs (Import-I), New Custom House, Mumbai Zone-I.* The impugned order was passed by the officer who was not competent/authorized to adjudicate this case in view of the corrigendum dated 29.03.2016 issued by the MZU, DRI. Hence, this order is not legal and proper in law, as it has violated section 2(1) of the Customs Act, 1962. The relevant section is reproduced for ready reference:

Section 2(1) "*adjudicating authority*" means any authority competent to pass any order or decision under this Act, but does not include the Board, [Commissioner (Appeals)] or Appellate Tribunal".

16. Accordingly an appeal was filed by the Deputy Commissioner of Customs, Gr.-IV, NS-II, JNCH before the Commissioner (Appeal). Upon hearing the appeal, the Commissioner (Appeals), vide Order in Appeal No. 868(GR-IV)/2024(JNCH)/Appeals dated 28.06.2024 set aside the impugned Order-in-Original No. 628/2020-21/ADC/NS-III/CAC/JNCH dated 15.03.2021 passed by the Additional Commissioner of Customs, NS-III, JNCH, Nhava Sheva and remanded the case/SCN back to the proper officer (JC/Addl. Commissioner of Customs, Import-I, NCH, Mumbai, Zone-I) as per corrigendum dated 29.03.2016 to the subject Cause Notice to adjudicate it afresh by following the principles of natural justice.

PERSONAL HEARING IN DENOVO ADJUDICATION

17. Pursuant to the order passed by the Commissioner (Appeals), opportunities for personal hearing in the denovo adjudication proceedings were granted to all the noticees, including M/s Heavy Steel Impex, having address at 7, Kikabhai Mansion, Room No. 23, Kika Street, 1st Floor, Mumbai-400004, Maharashtra, on 23.10.2024, 05.11.2024, and 13.11.2024 (address as mentioned in SCN/Last Known Address) vide DIN No. 2024107700000000B163, 202410770000000012416 and 2024107700000000FBC2 respectively. However, all the personal hearing letters sent via speed post to the noticees were returned with the remark "*unknown address/not known address etc.*". Additionally, in accordance with the provisions of Section 153 of the Customs Act, 1962, which outlines the prescribed modes of serving notices, orders, or other communications, the hearing dates were prominently communicated by displaying them on the Department notice board. However, neither any of the noticees appeared for the hearing and nor they made any written submission in the subject matter.

DISCUSSION AND FINDINGS

18. Before proceeding further, I find that this SCN was issued on 10.02.2012 and the corrigendum was issued on 29.03.2016 to the subject Show Cause Notice vide which the Adjudicating Authority has been changed from JC/JNCH to JC/Addl. Commissioner of Customs (Import-I), NCH, Mumbai, Zone-I. I have carefully gone through the facts of the case. I find that in the instant case, a fair opportunity was provided to the importer for replying to the demand notice. The importer, however, has failed to file any defence though a considerable time has passed. I further find that the importer failed to avail the opportunities of Personal hearing provided to defend their case. I find that neither the Noticee has appeared for personal hearing on any of the dates given to them to present their case nor have they submitted any reply to the allegation mentioned in the above said SCN. Thus, I find that sufficient time and opportunity has been given to the noticee and therefore principles of natural justice have been complied with.

19. In this regard, reliance is also placed upon judgement of Hon'ble Delhi Tribunal reported as 2012 (286) E.L.T. 79 (Tri. - Del.): COMMISSIONER OF C. EX., CHANDIGARH Versus PEE IRON & STEEL CO. (P) LTD. [Final Order No. A/883/2012-EX(BR)(PB), dated 24-7-2012 in Appeal No. E/6066/2004] wherein it has been held that:

Hearing - Notice to assessee - Received back undelivered with report that address was not correct - No other address of assessee found to be available on record - In that view, as assessee could not be served the notice without undue delay and expense, matter proceeded ex parte against assessee. [para 9]

19.1 I find it relevant to refer to the judgement of Hon'ble Tribunal Chennai in the case of V.K Thampi Vs. Collector of Customs and Central Excise, Cochin [1988 (033) ELT 424], wherein Hon'ble Tribunal held at para 7 that "an adjudicating authority is entitled to proceed ex-parte if the person concerned does not appear before it in response to a notice issued by it".

20. Further, on the issue of affording sufficient opportunities to the Noticee to defend himself vis-a-vis allegation made, I find it relevant to refer to the judgement of Hon'ble Allahabad High court in the case of Modipon Ltd. Vs CCE, Meerut reported as 2002 (144) ELT 267 (AIL). The Hon'ble High Court at Para 19 held as follows:-

"No doubt hearing includes written submission and personal hearing as well but the principle of Audit Alteram Partem does not make it imperative for the authorities to compel physical presence of the party concerned for hearing and go on adjourning the proceedings so long the party concerned does not appear before them. What is imperative for the authorities is to afford the opportunity. It is for the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice. In the instant case as stated in detail in preceding paragraphs, repeated adjournments were granted to the petitioners,

dates after dates were fixed for personal hearing, petitioners filed written submissions, the administrative officer of the factory appeared for personal hearing and filed written submissions, therefore, in the opinion of this Court there is sufficient compliance of the principles of natural justice as adequate opportunity of hearing was afforded to the petitioners” .

21. Hence, I accordingly proceed with the ex-parte finalization of the adjudication proceedings, based on the facts and evidence available on record.
22. I find that intelligence developed by the officers of the Mumbai Zonal Unit of Directorate of Revenue Intelligence indicated that several importers of flat cold rolled stainless steel products (coils/sheets/plates) were evading payment of anti-dumping duty either by mis-declaring the Country of Origin or by mis-declaring the size, nature, and quality of the goods. In addition to mis-declaring the Country of Origin, the importers were also resorting to mis-declaration of width (width declared to be above 1250 mm or below 600 mm) of the products so imported. Further thickness in many cases was being deliberately mis-declared as more than 4 mm.
23. I find that Notification No.14/2010-Customs dated 21.12.2010 imposes anti-dumping duty on Flat Cold Rolled Products of stainless steel falling under heading 7219 of the First Schedule to the Customs Tariff Act, 1975, which originate in or are exported from the People's Republic of China, Korea, European Union countries, South Africa, Taiwan (Chinese Taipei), Japan, Thailand, and the United States of America (USA) at various rates mentioned in the said notification subject to the condition that the goods are of a width ranging between 600 mm to 1230 mm of all series and of a thickness of up to 4 mm.
24. I find that, based on the statement dated 28.10.2010 of Shri Rajesh Nakhua, partner of the CHA firm M/s Durga International, M/s Heavy Steel Impex, having IEC No. 0309022006 (hereinafter referred to as the importer) was identified as one of the importers who had mis-declared the description/dimensions of the product or the country of origin to evade payment of anti-dumping duty and further, one consignment imported under Bill of Entry No. 973377 dated 27.10.2010 by the importer was identified and detained on 23.11.2010 for ascertaining the nature of the import cargo.
25. I find that, goods covered by Bill of Entry No. 973377 dated 27.10.2010, were imported from M/s Dinowic Pte. Ltd, Singapore. The port of loading was Antwerp. The Country of origin declared on the Bill of Entry was Germany (country in the European Union). As per invoice No. 100869DW dated 09.09.2010, 19 packages weighing 27.618 metric tonnes declared as SS Secondary Defective CR SS coil, grade 304 of width above 1500. The rate indicated on the invoice was 2320 US\$ per metric tonne CIF. The goods were covered by Bill of Lading BE2397561 dated 14.09.2010.

26. I find that, the goods were assessed by customs at the rate of 2450 US\$ per metric tonne CIF. The assessable value of the goods was Rs. 31,16,337.79. Customs Duty of Rs. 8,36,696.00 and interest of Rs. 5,159.00 was paid on 16.11.2010. The Customs Duty was paid at the rate of 10% BCD, 2% Edu Cess, 1% higher Edu Cess, 10% CVD, 2% Edu Cess, 1% higher Edu Cess, and 4% SAD. The description of the goods on the Bill of Entry was "Cold Rolled Stainless Steel Secondary Defective Coils/Sheets, Grade 304/304L (width above 1265 mm).

27. I find that, the consignment kept on hold was examined under panchnama on 23.11.2010 at Container Freight Station M.O.D Mumbai Port in presence of the CHA and two coils totally weighing 2791 Kgs (1351 Kgs + 1440 Kgs) where the width declared as 1300 mm were actually found to be of 1250 mm width of grade 304 and these goods attracted anti-dumping duty under Notification no. 14/2010-Customs dated 20.02.2010 at the rate of US\$ 1646.32/M.T. as per serial number 6 of the table.

Further, examination also revealed that seven coils totally weighing 6.430 MT (0.580, 0.695, 0.705, 1.420, 1.195, 0.745, and 1.090) were mis-declared as having grade 304 instead of 316. The PMI test of the goods done on 23.11.2010 confirmed that the grade of these seven coils was 316. The composition includes mainly Nickel chromium and the presence of molybdenum besides other trace elements. The Chromium content is higher in grade 304 but lower in nickel content than grade 316. However, molybdenum in 316 is 2 to 3 percent whereas in 304 it is nil or in trace quantity. Further, Cold Rolled Stainless Steel Flat Products of grade 304 are cheaper than grade 316. By declaring the grade of the said goods as 304, the importer had undervalued the said goods.

28. I find that as per the Bill of Entry, the seven coils weighing 6430 Kgs were valued at Rs. 7,18,359.60 CIF (Assessable value Rs. 7,25,543.29) for the purposes of assessment. ***It was admitted by Shri Jain that the value of grade 316 Flat CRSS product was US\$ 3400/MT.*** Accordingly, the value of the seven coils works out to Rs. 9,96,907.20 CIF (Assessable value Rs. 10,06,876.27). The mis-declaration of grade of the seven coils caused under-reporting of the value by Rs. 2,78,547.60 CIF (Assessable value Rs. 2,81,333.07) at import.

29. I find that, Shri Mohanlal Meyachand Jain, the proprietor of ***M/s Heavy Steel Impex during his statement admitted that due to misdeclaration of width, antidumping duty was evaded*** in respect of 2 (two stainless steel coils as 304 instead of 316 in the case of 7 coils there was evasion of customs duty also. He voluntarily submitted Demand Draft no. 009189 and 009188 respectively both dated 25.11.2010 for an amount of Rs. 2,30,000/- towards antidumping duty liability and amount of Rs. 71,000/- towards the differential customs duty. These Demand Drafts were deposited on a challan at New Custom House, Mumbai, under Cash No. 91 dated 08/12/2010. The detained goods were released provisionally pending finalization of investigations on execution of a Provisional Duty Bond and furnishing security in the form of Bank Guarantee dated 03/02/2011 for Rs. 3,27,500/- (Three Lakhs twenty-seven thousand five hundred only) issued by HDFC Bank,

Null Bazar Branch, with validity of one year, not to be revoked without written consent of the government during its currency.

30. I find that *Shri Jain admitted* that due to the mis-declaration of width, anti-dumping duty was evaded in respect of 2 (two) stainless steel coils as the width fell between 600 mm to 1250 mm; and due to the mis-declaration of grade as 304 instead of 316, in the case of 7 coils there was evasion of customs duty also.

Statement 108 is admissible:-

I find that it is pertinent to mention that in the following cases, it has been held that *statement before a Customs Officer is a material piece of evidence and certainly can be used as substantive evidence.*

- i. *Asst. Collector of Central Excise, Rajamundry v. M/s. Duncan Agro Industries Ltd.* reported in 2000 (120) E.L.T. 280 (S.C.) : Statement recorded by a Customs Officer under Section 108 is a valid evidence.
- ii. In 1996 (83) E.L.T. 258 (S.C.) in the case of *Shri Naresh J. Sukawani v. Union of India* : a statement before a Customs Officer is a material piece of evidence and certainly can be used as substantive evidence.
- iii. It was held that statement recorded by the Customs officials can certainly be used against a co-notice, when a person giving a statement is also tarnishing his image by making admission of guilt. Similar view was taken in the case of *Gulam Hussain Shaikh Chougule v. S. Reynolds* (2002) 1 SCC 155=2001 (134) E.L.T. 3 (S.C.).
- iv. In the case of *BhanaKhalpa Bhai Patel Vs. Asstt. Collr. Of Cus., Bulsar* [1997 (96) ELT 211 (SC)], the Hon'ble Apex Court at Para 7 of the judgement held that :-

“Para 7: It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Romesh Chandra v. State of West Bengal, AIR 1970 S.C. 940 and K. LPavunny v. Assistant Collector (H.Q.), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241(S.C.) = (1997) 3 S.C.C. 721.”

31. I find that, earlier, 12 consignments had been imported in the month of March 2010; Shri Mohanlal Meyachand Jain was summoned to DRI office, and his further statement was recorded on 11.10.2011. He reiterated the submissions made by him in his statement dated 02.12.2010. When asked about the imports of M/s Heavy Steel Impex prior to and after 27.10.2010, he stated that after October 2010, he had not imported any consignments. Prior to October 2010, they had imported 12 consignments of CRSS/HRSS coils/sheets. He stated that they had not resorted to any mis-declaration in respect of any of the imports in the past.

32. I find that, in respect of the two coils, weighing 2.791 MT (1.351 & 1.440), the importer has mis-declared the width as more than 1500 MM instead of 1250 MM, to evade payment of anti-dumping duty leviable in terms of Notification no. 14/2010-Cus dated 20.02.2010 issued under the provisions of Section 9A of the Customs Tariff Act, read with the Customs Tariff (Identification, Assessment, and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 and in respect of seven other coils, totally weighing 6.430 MT, having declared value of Rs. 6,80,242.56 CIF (value for assessment Rs. 7,18,359.60 CIF), the importer has knowingly mis-declared the grade as 304 in place of 316, in order that the lower value is taken for purpose of assessment by customs appraising officers, thus evading payment of appropriate amount of customs duty under the provisions of the Customs Tariff Act, 1962.

In view of the above findings, it is evident that the goods in question were deliberately mis-declared with incorrect specifications, particularly regarding their width and grade. Specifically, the width was falsely declared as 1300 mm, while upon examination, it was found to be 1250 mm. Additionally, the grade of the goods was inaccurately declared as 304, whereas the actual grade was determined to be 316. This deliberate misdeclaration not only led to the undervaluation of the goods but also resulted in the under-reporting of their true value, *clearly indicating an intent to evade the applicable anti-dumping duty*. Consequently, the evasion of anti-dumping duty underscores an intentional effort to circumvent customs regulations and evade lawful financial obligations. Such actions constitute a blatant violation of statutory provisions and undermine the principles of fair trade and compliance with regulatory norms. The importer failed to disclose the actual specifications and value of the goods, specifically with respect to their width and grade. This act of *suppression of material facts* was done with the intent to conceal the true nature of the goods and evade the applicable anti-dumping duty. The suppression directly impacted the duty assessment, leading to a loss of revenue to the exchequer.

Also, in the era of self-assessment, it is the legal duty of the importer to truly declare the value, description, and other relevant parameters of the imported goods for proper assessment of customs duty. In this case, the importer has clearly failed to fulfil this statutory duty. If not for the proactive investigation initiated by the Department of Revenue Intelligence (DRI), the duty evasion by importer would have gone undetected. Therefore, the wilful suppression and evasion of duty is quite evident in this case.

33. Hence, I find that, the anti-dumping duty of Rs. 2,09,526.48 and the differential customs duty of Rs. 75,534.24 payable on the goods referred to above is recoverable under Section 28(4) of the Customs Act, 1962 read with section 9A(8) of the Customs Tariff Act, 1975, along with applicable interest under Section 28AA of the Customs Act, 1962, and mis-declaring the width of goods with intent to evade anti-dumping duty. Also, mis-declaring the grade of the goods with intent to evade payment of appropriate customs duty have rendered the goods liable for confiscation under Section 111(m) of the Act, 1962. Accordingly, Importer & Shri Mohanlal Jain,

proprietor of M/s Heavy Steel Impex, is also liable for penal action under Section 112(a) and/or 114A of the Customs Act, 1962.

34. I find that Hon'ble Tribunal in case of *M/s Venus Enterprises Vs. Commissioner of Customs, Chennai-2006(199), ELT 661 (Tri.-Chennai)*, has held that once the goods are held liable for confiscation, fine can be imposed even if the goods not physically available. When there is misdeclaration and suppression of value, the offending goods are liable for confiscation under Section 111(m) of the Customs Act. Hence, the imposition of fine even after the clearance of the goods is not against the law. Since the original authority has to re-compute the duty liability, the imposition of fine as well as penalty under the Customs Act is kept open. Further, I also find that *Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.)*, has been held as under: -

“22. We must also bear in mind that for improper importation of the dutiable goods or the prohibited goods, the importer is liable to be proceeded against under Section 112 of the Act by subjecting him to a penalty. Therefore, the fine proposed to be imposed under Section 125 of the Act is directed against the goods, in addition to the one that was already provided for under Section 112 of the Act. The fine contemplated is for redeeming the goods, whereas, the importer is sought to be penalised under Section 112 for doing or omitting to do any act which rendered such goods imported by him, liable to be confiscated under Section 111 of the Act and for that act or omission, the appellant is liable to be penalised.

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 issue ought 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.....”.

35. Relying on the guiding judgments cited above, I conclude that the imposition of redemption fine under Section 125 of the Customs Act, 1962, is not contingent upon the physical availability of the goods. Redemption fine is intrinsically linked to the authorization of

confiscation under Section 111 and serves to mitigate the consequences of such confiscation. Therefore, the absence of the impugned goods does not preclude the imposition of redemption fine, which remains valid and enforceable in accordance with the law. Thus, I find that the fact that the impugned goods are not available for confiscation does not prevent me to impose redemption fine.

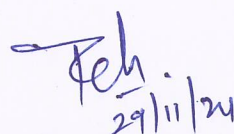
36. I have also find that under the aforesaid Show Cause Notice also proposes penalties under Section 112(a) and/or Section 114A of the Customs Act, 1962. However, as per the proviso to Section 114A of the Act, it is explicitly stated that when a penalty is imposed under Section 114A, no penalty shall be imposed under Section 112 for the same act or omission. This legal provision ensures that penalties under both sections cannot be levied simultaneously for the same offense, thereby avoiding duplication of penalties.

37. In view of the above discussion and findings and considering the facts of the case, documentary evidence, and the statements, I pass the following order :-

- i. I confirm the demand and recovery of Anti-Dumping Duty amounting to **Rs. 2,09,526/- (Rupees Two Lakh Nine Thousand Five Hundred Twenty-Six Only)** payable on the two coils weighing 2.791 MT and **valued at Rs. 3,11,810.52 CIF**, imported and cleared under Bill of Entry No. 973377 dated 27.10.2010, under Section 28 (4) of the Customs Act, 1962, read with the provisions of Sections 9A(8) of the Customs Tariff Act, 1975, along with applicable interest under Section 28AA of the Customs Act, 1962.
- ii. I reject the value of Rs. 7,18,359.60 CIF (Declared CIF Rs. 6,80,242.56) of the seven coils weighing 6.430 MT where grade was mis-declared as 304 instead as 316, imported and cleared under Bill of Entry no. 973377 dated 27/10/2010 in terms of Rule 12 of the Customs Valuation Determination of Value of Imported Goods Rules 2007 and order it to be reassessed/re-determined at **Rs. 9,96,907.20 CIF** in terms of Rule 9 ibid.
- iii. I confirm the demand and recovery of Differential Customs Duty amounting to **Rs. 75,534/- (Rupees Seventy-Five Thousand Five Hundred Thirty-Four Only)**, payable on the seven coils of 6.430 MT imported and cleared under Bill of Entry No. 973377 dated 27.10.2010, under the provisions of Section 28 (4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.
- iv. I confiscate the impugned goods total weighing 9.221 MT (two coils weighing 2.791 MT + seven coils weighing 6.430 MT) imported under Bill of Entry No. 973377 dated 27.10.2010 having an value of **Rs.13,08,717.70/- CIF (two coils 2.791 MT (Rs. 3,11,810.52/- CIF + seven coils 6.430 MT (reassessed/re-determined value Rs. 9,96,907.20 CIF)** under Section 111(m) of the Customs Act, 1962. However, I give an option to redeem the said goods to the importer on payment of **Redemption Fine of Rs. 1,40,000/- (Rupees One Lakh and Forty thousand only)** under the provision of Section 125(1) of the Customs Act, 1962.

- v. I impose a penalty equal to the short duty paid and interest upon the importer, M/s Heavy Steel Impex under Section 114A of the Act, provided that where such duty and interest is paid within thirty days from the date of the order of the proper officer determining such duty, the amount of penalty liable to be paid under this section shall be 25% of the duty or interest, as the case may be, so determined. The benefit of reduced penalty shall be available subject to condition that the amount of penalty so determined has also been paid within the period of thirty days.
- vi. I do not impose penalty under Section 112(a) of the Act on the importer, M/s Heavy Steel Impex as penalty under Section 114A of the Act has already been imposed on it.
- vii. I order for the appropriation of the amount of Rs. 2,30,000/- & Rs. 71,000/- deposited by the importer towards their Anti-Dumping Duty and Differential Customs Duty liabilities, towards the duties of customs confirmed in this order.

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.


29/11/24

(Dr. Prashant Chauhan)
Joint Commissioner of Customs
Adjudication, Import-I, NCH

By Email./Regd. ADD./Speed Post

To:

1. M/s Heavy Steel Impex, 7, Kikabhai Mansion, Room No. 23, Kika Street, 1st Floor, Mumbai-400004.
2. Shri Mohanlal M. Jain, Proprietor, M/s Heavy Steel Impex, Mumbai.

Copy to:

1. The Commissioner of Customs (Import), New Custom House, Mumbai.
2. Additional Director, Directorate of Revenue Intelligence, Mumbai Zonal Unit, 13, Sir Vithaldas Thackersey Mark, New Marine lines, Mumbai 400020
3. Asstt./Dy. Commissioner of Customs, CAC, Mumbai zone-I, NCH.
4. Asstt./Dy. Commissioner of Customs, Review Cell (I), Mumbai zone-I, NCH
5. Asstt./Dy. Commissioner of Customs, CRRC, Mumbai zone-I, NCH
6. Asstt./Dy. Commissioner of Customs, EDI, Mumbai zone-I, NCH (for upload on website)
7. The Dy. /Asstt. Commissioner of Customs, Group - IV, New Custom House, Mumbai.
8. Notice Board
9. Office Copy

