CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70479 of 2024

(Arising out of Order-in-Original No.12/PC/NOIDA/CUSTOMS/2023-24 dated 15.11.2023 passed by Principal Commissioner of Customs, Noida)

M/s M. B. International, ...**Appellant**
(104A, B-9, ITL Twin Tower, Netaji Subhash Place,
Pitampura, Delhi-110034)

VERSUS

Principal Commissioner of Customs, Noida ....**Respondent**
(CONCOR Complex, Greater Noida-201311)

APPEARANCE:

Shri Vineet Kumar, Advocate and
Shri S. A. Khan, Consultant for the Appellant
Shri Manish Raj, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.70281/2026

DATE OF HEARING : 06.07.2026
DATE OF DECISION : 12.08.2026

K. ANPAZHAKAN:

The present appeal has been filed by M/s M. B. International, 104A, B-9, ITL Twin Tower, Netaji Subhash Place, Pitampura, Delhi-110034 (herein after referred as the Appellant), assailing the Order-in-Original No.12/PC/NOIDA/CUSTOMS/2023-24 dated 15.11.2023 passed by Principal Commissioner of Customs, Noida.

2. The facts of the case are that the Appellant, a proprietary concern of Shri Shreyance Jain, is engaged in import and trading of various merchandise including Cold Rolled Stainless Steel Coils and Sheets (CRSC/CRSS for short) and other similar products. In the routine course of his business, the Appellant imported a

consignment of "Decorative & Design Sheet Article of Wall Panel Grade J-3" and "Decorative Design Stainless Steel Profile GradeJ-3"at ICD Panchi Gujara, Gannaur, Sonepat and filed B/E No. 5128433 dated 01.10.2019. The said consignment was seized by the officers of Preventive Commissionerate, Delhi. Later, the said case was transferred to DRI(DZU).

2.1. Apart from the above consignment, the Appellant also imported another consignment of Cold Rolled Coated Stainless Steel Sheets of J-3 Grade having different sizes and filed B/E No. 6101337 dated 16.12.2019 for clearance of the same at ICD, Dadri. The said consignment was initially detained and subsequently seized by the DRI (DZU) on the ground that the goods covered under the aforesaid B/E was mis-classified.

2.2. After seizure, proceedings were initiated against the Appellant. During investigation, the DRI officers conducted search of the residential premises of the Appellant and recorded the statement of Shri Shreyance Jain, the proprietor of the Appellant on the day of search dated 17.12.2019. His statements were also recorded on various dates, 24.10.2019 & 25.10.2019, 04.03.2020, 05.03.2020, 06.03.2020, 01.02.2021 and 06.09.2021. The DRI officers seized cash worth Rs. 16,10,000/- found during search of the residence of joint family of the Appellant. The cash was later deposited by the DRI towards tentative duty liability.

3. In respect of consignment covered under B/E No. 6101337 dated 16.12.2019 seized on 09.03.2020, a Show Cause Notice dated 07.12.2021 was issued answerable to the Additional Commissioner, ICD, Dadri. The Appellant filed reply to the said Show Cause Notice. However, that Show Cause Notice was subsequently made answerable to the learned Respondent and adjudicated vide common impugned order. Thereafter a Supplementary Show Cause Notice dated 19.12.2022 was issued to the Appellant requiring him to file reply to the Additional Commissioner, ICD, Dadri. This Show Cause Notice was also made answerable to the learned Respondent vide Corrigendum

dated 07.11.2023 / 07.12.2023. The said Show Cause Notice has also been adjudicated vide the impugned order.

4. In the Show Cause Notices, it has been alleged that the Appellant M/s M. B. International had imported CRSC/CRSS of Chinese origin directly from China as well as routed through Malaysia. It has been alleged that the Appellant had mis-declared the classification of the goods under the Tariff Item No.73269060 of the Customs Tariff Act whereas goods imported by them were appropriately classifiable under the Chapter Heading No.72199090. It was also alleged that the Appellant has undervalued the goods and hence the value declared by them has to be rejected and redetermined in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. It was also alleged that the Appellant has wrongly claimed the benefit of Notification No.46/2011-Cus. dated 01.06.2011, as the goods were of Chinese origin imported through Malaysia, the Appellant was not eligible for the benefit of the said Notification dated 01.06.2011. Accordingly, the Notice proposed to reject the Country of Origin Certificates (COOs) submitted by the Appellant at the time of clearance of the goods and to deny the benefit of the said notification. As the Certificates of Origin submitted by the Appellant from Malaysia were found to be fake, the Notice proposed demanding of differential Customs duty in respect of the goods imported, by rejecting the COOs.

4.1. In the Common adjudication order dated 15.11.2023, the Ld. Principal Commissioner of Customs, Greater Noida, Ghaziabad, has passed the following order:-

> (i) I reject the classification under tariff item 73269060 of the CTA, for the goods entered and declared in the bills of entry detailed in duty Annexures to the SCN dated 29.11.2022, and order re-determination under appropriate tariff item of the CTA, as per value mentioned in said Annexures to the SCN. with consequential duty liability;

(ii) I reject the value of the goods declared in the bills of entry, detailed in the Annexure-MB-1/MB-2/MB-3/MB-4 to the SCN dated 29.11.2022, in terms of the Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order re-determination thereof at Rs 27,23,88,617/- (Rupees Twenty Seven Crore Twenty Three Lac Eighty Eight Thousand Six Hundred and Seventeen only), as detailed in Annexure-MB-1/MB-2/MB-3/MB-4, to the SCN dated 29.11.2022, in terms of the Section 14 of the Customs Act, 1962 read with Rule 3 & 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, with consequential duty liability. I also reject the value of goods declared in the Bill of Entry No 6101337 dated 16.12.2019 in terms of the Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order re-determination thereof at Rs 36,67,765/- (Rupees Thirty Six Lac Sixty Seven Thousand Seven Hundred Sixty Five only) in terms of the Section 14 of the Customs Act, 1962 read with Rule 3 & 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, with consequential duty liability;

(iii) I order denial of the benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, as amended, on the goods of Chinese origin imported from Malaysia under the bills of entry detailed in the duty Annexures to the SCN dated 29.11.2022 and also under Bill of Entry No. 6101337 dated 16.12.2019;

(iv) I confirm the demand of differential duty amounting to Rs 9,55,44,044/- (Rupees Nine Crore Fifty Five Lac Forty Four Thousand and Forty Four only) short levied / short paid on the goods covered under bills of entry, as detailed in Annexure- MB-1/MB-2/MB-3/MB-4 o the SCN dated 29.11.2022 and also against Bill of Entry No. 6101337 dated 16.12.2019, under Section 28(4) of the Customs Act, 1962;

(v) I confirm the demand of interest under Section 28 AA of the Customs Act, 1962 on the demands of duty confirmed at (iv) above;

(vi) I hold the goods imported under the bills of entry, as detailed in Annexure-MB-1/MB-2/MB- 3/MB-4 to SCN dated 29.11.2022, and under Bill of Entry No. 6101337 dated 06.12.2019, collectively valued at Rs 27,60,56,382/- (Rupees Twenty Seven Crore Sixty Lac Fifty Six Thousand Three Hundred Eighty Two only) liable to confiscation under Section 111(m) of the Customs Act, 1962,

(vii) I impose redemption fine of Rs 6,90,14,100/- (Rupees Six Crore Ninety Fourteen Thousand One Hundred only) in lieu of confiscation of goods mentioned at Sl.No. (vi) above, under Section 125 of the Customs Act, 1962;

(viii) I appropriate Rs. 31,10,000/- (Rupees Thirty One Lakh Ten Thousand Only), voluntarily deposited during investigation, towards their differential duty liability, against the aforesaid confirmed demands;

(ix) I impose penalty of Rs 9,55,44,044/- (Rupees Nine Crore Fifty Five Lac Forty Four Thousand and Forty Four only) upon the Noticee le. M/s M.B. International (through its Proprietor, Shreyance Jain) under Sections 114A of the Customs Act, 1962.

(x) I do not impose penalty under Section 112 (a)/112(b) of the Customs Act, 1962 in view of the penalty imposed under Section 114A of the Customs Act, 1962.

(xi) I impose penalty of Rs 10,00,00,000/- (Rupees Ten Crore only) upon the Noticee i.e. M/s M.B. International (through its Proprietor, Shreyance Jain) under Section 114AA of the Customs, Act, 1962,

(xii) I order initiation of prosecution proceedings against the Noticee i.e. M/s M.B. International (through its Proprietor, Shreyance Jain) under the provisions of Section 135 of the Customs, Act, 1962.

4.2. Aggrieved against the demand of differential customs duty along with interest and imposition of various penalties, the Appellant has filed this appeal.

5. At the outset the Appellant submits that in the initial Show Cause Notice there were no proposals regarding rejection of the declared value on the ground of mis-declaration of value, denial of benefit of Notification No. 46/2011-Cus dated 01.06.2011 and the quantum of duty demanded was Rs. 2,86,190/- whereas in the Supplementary Show Cause Notice fresh proposals were made to reject the declared value and denial of benefit of Notification No. 46/2011-Cus and duty demand was enhanced to Rs. 10,22,048/-. Although Supplementary Show Cause Notice has been issued under Notification No. 42/2019-Cus (NT) dated 18.06.2019, the changes / additions made in the Supplementary Show Cause Notice are not permitted under Customs (Supplementary Notice) Regulations, 2019. The Department cannot justify the Supplementary Show Cause Notice merely by relying upon Regulation 4(1)(c) of the Customs (Supplementary Notice) Regulations, 2019, because denial of benefit of Notification No. 46/2011-Cus dated 01.06.2011 does not amount to invocation of an additional section of the Customs Act, 1962. A Customs Notification is not a "section" of the Act. It is subordinate legislation issued under the Act. At the highest, the Department may attempt to bring the Supplementary Show Cause Notice within Regulation 4(1)(a), on the ground of difference in quantum of duty, or Regulation 4(1)(d), on the ground of alleged additional evidence. However, even for that purpose, the supplementary notice must remain within the permissible scope of the original notice and must be issued within the limitation prescribed under the relevant provisions of the Customs Act. In the present case, the original Show Cause Notice did not contain any proposal for denial of benefit of Notification No. 46/2011-Cus, nor did it contain the necessary factual foundation for such denial. The Supplementary Show

Cause Notice has introduced a fresh and substantive ground by proposing denial of preferential exemption under Notification No. 46/2011-Cus and by enhancing the duty demand. Such a course is beyond the limited scope of a supplementary notice and amounts to issuance of a fresh Show Cause Notice in the guise of a supplementary notice. Therefore, the demand confirmed on the basis of such fresh proposal is liable to be set aside. Moreover, the Supplementary SCN has been issued after one year of the original Show Cause Notice. Therefore, the Supplementary Show Cause Notice is void ab initio and as such confirmation of demand with interest and penalties to that extent, are liable to be set aside on this ground alone.

5.1 The corrigenda to the SCNs were issued after about two years of the issue of SCN dated 07.12.2021 and one year after issue of SCN dated 20.12.2022 and were not received by the Appellant even after filing replies and additional submission, therefore, the impugned order has been passed in clear violation of the principles of natural justice. Moreover, the issuance of such corrigenda immediately before issue of Order-in-Original, is bad in law and the corrigenda are non-est in the eyes of law inasmuch as no sufficient opportunity has been provided to the Appellant.

5.2 The Appellant further submits that demand of Customs duty against finally assessed BE's cannot be issued by the department without challenging the assessment order contained in such BE's as held by the Hon'ble Supreme Court in the following cases:-

i. Priya Blue Industries Ltd. vs. C.C (Prev) 2004(172) ELT 145 (SC),

ii. Collector vs. Flock (India) Pvt. Ltd. 2000 (120) ELT 285 (SC)

iii ITC Ltd. vs. C.C.E - 2019 (368) ELT 216 (SC)

Wherein the Hon'ble Supreme Court while upholding the judgments in the case of Priya Blue Industries Ltd. and Flock

(India) Pvt. Ltd. has held that assessment in a B/E includes self-assessment and that has to be challenged in appeal.

5.3. Then Appellant submits that one of the allegations against them is that the COOs were not genuine. The Appellant submits that the said allegation is not sustainable as it is based on conjectures and surmises and on such documents, which have not been provided to the Appellant. The submission of the Appellant is that they have imported certain consignments of stainless steel products from the following Malaysian suppliers:-

(i) M/s Hard Metal Trade, SDN, BHD;

(ii) M/s World Ocean Logistics, SDN, BHD and

(iii) M/s Somior Steel Imports Co. Ltd.

Notification No. 46/2011-Cus dated 01.06.2011 issued under ASEAN-India Free Trade Agreement exempts the goods imported into India from ASEAN countries from payment of Customs duty to the extent mentioned in the said notification subject to fulfilment of conditions mentioned in the notification and the Rules of Origin. One such condition is that the supplier of the originating country would obtain COO Certificate from the concerned ministry of that country and supply the original copy thereof to the importer in India. The importer would produce such certificate to the Indian Customs at the time of filing B/E for clearance of the consignment. The B/E and other relevant import documents including COO are subject to verification by the Customs Officers at the port of import. In the present case, the Malaysian suppliers provided original copy of COOs to the Appellant in prescribed format duly certified by the competent authority of Ministry of International Trade & Industry (MITI), Malaysia as apparent from the COO certificates bearing rubber stamp of MITI and signature of the competent officer. The Appellant submitted COO in original received from the suppliers to the Indian Customs at the port of import and accordingly the consignments were duly examined and in all cases the import documents including COO Certificate, were duly verified by the

Customs officers before allowing clearance for home consumption.

5.4 The Appellant submits that the investigation against the Appellant was initiated on the basis of communications (exchange of e-mails) between MITI and Government of India wherein a list of 87 COOs were provided by MITI vide e-mail dated 14.04.2021 informing that based on their assessment 87 out of the 143 COOs sent for verification, are not authentic and they were not issued by the MITI. It has also been mentioned that the MITI had never received any COO applications from the respective companies.

5.5. The Appellant submits that out of the 87 COOs found to be not genuine, the Certificate of Origin ("COO") bearing No. KL-2019-AI-21-018819, purportedly issued by M/s Hard Metal Trade Sdn. Bhd., submitted by the Appellant was found to be fake. On the basis of this solitary allegation, the DRI proceeded to presume that all the COOs issued by the other suppliers, submitted by the Appellant were also fake. In this regard, the Appellant submitted that the goods covered under B/E No. 6101337 dated 16.12.2019 were seized by the officers of ICD, Dadri vide Panchnama dated 14.01.2020 (RUD-2 placed at Pg. No. 295 – Paper-Book-2 of the Appeal). It may be seen that at the time of seizure the officers also seized B/E No. 6101337 dated 16.12.2019 along with COO bearing No. KL-2019-AI-31-018231 dated 29.11.2019, (which is part of RUD-2). It may be appreciated that the DRI has deliberately chose to mention incorrect number of COO although the correct COO was available with them at the time of issuing the Show Cause Notice. COO No. KL-2019-AI-31-018231 dated 29.11.2019 is not mentioned in the list of 87 unauthentic COOs enlisted in the email received by the department from MITI. Thus there is, in fact, none of the COOs submitted by the Appellant in respect of the consignments imported from Malaysia, is appearing as unauthentic. The discrepancy arose merely because an incorrect COO number was recorded. The correct COO number is KL-2019-AI-21018231. In support of this claim, the Appellant submitted copy of the said

COO, along with the corresponding Bill of Entry, Panchnama, commercial invoice, and marine insurance document, for consideration of the Bench.The Appellant has also enclosed a consolidated list of all the COOs submitted at the time of importation. A perusal of the said list and the supporting documents would demonstrate that none of the COOs was fake. Thus, the Appellant submitted that the entire case has proceeded on an erroneous factual premise arising from a typographical or recording error, without any independent verification of the remaining COOs. Thus, the Appellant submits that there was no case for rejection of the Country of Origin Certificates filed by them. As per the Rules of Origin, the supplier of the originating country has obtained the COO Certificates from the concerned ministry and furnished the same to them. If the certificates were valid at the time of import, it could not be disputed by the Custom authorities at a later stage, as held by the Tribunal, Kolkata in the case of Shri Shyam Synthetics Versus Principal Commissioner of Customs vide Final Order 75381/2025 dated 18th February 2025, by following the ratio of the judgment of the Hon’ble Supreme Court in the case of Sampat Mal Dugar– Union of India 58 ELT Page 163 (SC).

5.6. Thus, the Appellant submits that the COO Certificates submitted by them are authentic and they would be eligible for the benefit of exemption as provided under the Notification No.46/2011-Cus dated 01.06.2011.

6. Regarding the reclassification of the goods imported, the Appellant submits that the Goods imported are appropriately classifiable under the CTH classified under CTH 7326 as declared by them. The department has not brought in any evidence to re-classify the goods imported under the CTH 7219 of the Customs Tariff Act, 1975. The Department has contended that the Appellant has imported similar goods from China with the description ‘Colour Coated Cold Rolled Stainless Steel Sheets’ and classified the same under the CTH 72199090. It is alleged that there is no difference in the sheets imported from Malaysia; the manufacturing process and end use of SS Sheets imported

from Malaysia and China were the same. The Appellant submits that no representative samples of the seized consignments were drawn at the time of examination or seizure of the goods, for testing/chemical analysis by any recognized laboratory or technical agency. In the absence of any test report or expert opinion, the finding that the goods were classifiable under CTH 7219/7220 is based merely on assumptions and presumptions. Accordingly, the Appellant submits that reclassification of the goods under the CTH 72199090 is legally not sustainable.

6.1. The Appellant submits that in order to change the classification of the goods imported, the burden is on the Revenue to adduce proper evidence. The Hon’ble Supreme Court in the case of H.P.L. Chemicals Ltd. v. CCE, Chandigarh, 2006 (197) E.L.T. 324 (S.C.) held that when the Department seeks a different classification, it must produce proper evidence; mere assertion is not sufficient. The same principle was reiterated in Hindustan Ferodo Ltd. v. Collector of Central Excise, 1997 (89) E.L.T. 16 (S.C.), where the Supreme Court held that if Revenue fails to lead evidence to establish its proposed classification, the assessee's appeal should succeed.

6.2. Thus, the Appellant submits that the proposal for classification of the goods is not supported by any evidence and hence the classification of the goods under the CTH 7326, cannot be rejected.

7. Regarding valuation of the goods, the Appellant submits that the learned Adjudicating Authority has not followed the provisions of Rule 9 of the Customs Valuation Rules, 2007 for the purpose of enhancement of value. There is no evidence available on record that the Appellant has paid any amount over an above the declared invoice prices. In that circumstances the rejection of the transaction value declared by the Appellant is legally not sustainable. In this regard, the Appellant relied on the decision of the Hon’ble Supreme Court in the case of Eicher Tractor Ltd. V/s Commissioner of Customs, Mumbai reported at 2000 (122) E.L.T. 321 (S.C.) and in the case of Commissioner of Customs, Calcutta V/s South India Television P. Ltd. reported at

2007 (7) TMI 9 - (Supreme Court), wherein it has been held that valuation of the goods declared by the Appellant cannot be rejected and re-determined, without following the procedure set out in the Valuation Rules. In the present case, the Ld. Adjudicating authority has enhanced the value arbitrarily and not followed the procedure. Thus, the Appellant submits that the value declared by the Appellant cannot be rejected.

7.1. In view of the above submissions, the Appellants prayed for setting aside the impugned order and allow their appeal.

8. The learned Authorized Representative for the Revenue reiterated the findings recorded in the impugned order. He submits that the Show Cause Notices have been issued on the basis of evidence gathered by the Department and the statements recorded from Shri Shreyance Jain, proprietor of the Appellant company. The Learned Authorized Representative submits that Shri Shreyance Jain in his statement categorically admitted that goods have been imported from China and supplied from Malaysia. He also admitted that classification of the goods imported was modified to avail the benefit of Notification No.46/2011-Cus dated 01.06.2011. He also submits that additional money payable to the foreign supplier has been passed through hawala transactions. Accordingly, the learned Authorized Representative submits that differential customs duty confirmed in the impugned order along with interest penalty are legally sustainable.

9. Heard both the sides and perused the appeal documents.

10. At the outset, we find that the Appellant has raised some preliminary objections regarding the Supplementary Show Cause Notice issued in this case. It is the submission of the Appellant that in the initial Show Cause Notice, there were no proposals regarding rejection of the declared value on the ground of mis-declaration of value, denial of benefit of Notification No. 46/2011-Cus dated 01.06.2011 and the quantum of duty demanded was Rs. 2,86,190/- whereas in the Supplementary Show Cause Notice fresh proposals were made to reject the

declared value and denial of benefit of Notification No. 46/2011-Cus and duty demand was enhanced to Rs. 10,22,048/-. We find that Notification No. 42/2019-Cus (NT) dated 18.06.2019, under Customs (Supplementary Notice) Regulations, 2019 permits issue of Supplementary Show Cause Notices. Regulations 4(1)(c) of the Customs (Supplementary Notice) Regulations, 2019, allows invocation of additional sections. Regulations 4(1)(a) and 4(1)(d) also permits issue of supplementary show cause notice on the ground of additional evidences detected during further investigation. However, we agree with the argument of the Appellant that the supplementary notice must remain within the permissible scope of the original notice and must be issued within the limitation prescribed under the relevant provisions of the Customs Act. In the present case, we find that the original Show Cause Notice did not contain any proposal for denial of benefit of Notification No. 46/2011-Cus, nor did it contain the necessary factual foundation for such denial. The Supplementary Show Cause Notice has introduced a fresh and substantive ground by proposing denial of preferential exemption under Notification No. 46/2011-Cus and by enhancing the duty demand. We observe that such a course is beyond the limited scope of a supplementary notice and amounts to issuance of a fresh Show Cause Notice in the guise of a supplementary notice. Moreover, we find that the Supplementary SCN has been issued after one year of the original Show Cause Notice. The corrigenda to the SCNs were issued after about two years of the issue of SCN dated 07.12.2021 and one year after issue of SCN dated 20.12.2022. The Appellant contended that they have not received the Corrigenda even after filing replies and additional submission. Therefore, it is their submission that the impugned order has been passed in clear violation of the principles of natural justice. We find merit in the submissions of the Appellant. We also find that the impugned Order-in-Original, has been passed immediately after issuance of the corrigenda. Therefore, we find merit in the submission of the Appellant that the Supplementary Show Cause Notice is void ab initio and as such confirmation of demand with interest and penalties to that extent, are liable to be set aside on this ground alone. Therefore, we are of the view that the demands confirmed on the basis of such fresh proposals in the Supplementary Show Cause Notice and Corrigenda are liable to be set aside, on the ground of limitation and not following the principles of natural justice. However, since the Appellant has contested the issue also on merits, we now proceed to examine the issues on merit.

11. We find that the demand of customs duty has been confirmed in the impugned order mainly on the basis of the following issues:-

a) Country of Origin Certificates furnished by the Appellant to the Customs in respect of consignments said to have been imported from Malaysia, are not authentic;

b) AS the COO Certificates are unauthentic, the Appellant would not be eligible for the benefit of exemption as provided under the Notification No.46/2011-Cus dated 01.06.2011

c) Goods imported by the Appellant were wrongly classified under the CTH 7326, whereas the correct classification of the impugned goods would be under the CTH 7219 of the Customs Tariff Act, 1975'

d) Undervaluation of goods imported by the Appellant.

12. We find that the Appellant has imported the goods namely CRSC/CRSS of Chinese origin directly from China as well as routed through Malaysia. The Appellant had declared the classification of the goods under the Tariff Item No.73269060 of the Customs Tariff Act and claimed the benefit of Notification No.46/2011-Cus. dated 01.06.2011, as the goods were of Chinese origin imported through Malaysia. The department alleged that the Appellant was not eligible for the benefit of the said Notification dated 01.06.2011. Accordingly, the Notice proposed to reject the Country of Origin Certificates (COOs) submitted by the Appellant at the time of clearance of the goods.
12.1. Regarding the issue of genuineness of the COOs submitted

by the Appellant, we find that the goods were examined by the proper officer of customs and the assessment was completed on the basis of the documents including the COOs submitted by the Appellant. The said goods were released by the Department after the assessment and after proper verification of Certificates of Origins by the Assessing Officer.

12.2. Regarding country of origin certificate (COO) submitted by the Appellant, we find that the investigating officers have conducted verification of 143 COOs from the Ministry of International Trade and Industry of Malaysia (MITI) whereas MITI verified and submitted a report stating that out of the 143 COOs 87 COOs were not found authentic. For ready reference said letter issued by MITI is extracted below:-

171 6101337 16/12/19 INSOEL6

ORIGINAL

1. Goods consigned from (Exporter's business name, address, country)
HARD METAL TRADE SDN BHD
NO 6, JALAN HAJI ABDUL KARIM 29/KS2,
SG JATI INDUSTRY PARK, 41200 KLANG,
SELANGOR, MALAYSIA.

Reference No.
KL-2019-AI-21-018819

ASEAN-INDIA FREE TRADE AREA
PREFERENTIAL TARIFF
CERTIFICATE OF ORIGIN
(Combined Declaration and Certificate)

FORM AI
Issued in MALAYSIA
(Country)
(See Notes Overleaf)

2. Goods consigned to (Consignee's name, address, country)
M.B. INTERNATIONAL
104A, B-9, ITL TWIN TOWER, NETAJI SUBHASH PALACE, DELHI- 110034, INDIA
IEC CODE: AHIPJ7088G
GST NO: 07AHIPJ7088G1Z0
EMAIL: Shreyansjain21@gmail.com
PAN NO.: AHIPJ7088G

3. Means of transport and route (as far as known)
Departure Date:
29 November 2019 by MARITIME TRANSPORT
Vessel's Name/Aircraft, etc.:
FOLEGANDROS / 01946W
Port of Discharge:
MUNDRA, INDIA

4. For official use
Preferential Tariff Treatment Given Under ASEAN-INDIA Free Trade Area Preferential Tariff
Preferential Tariff Treatment Not Given (Please state reason/s)

Signature of Authorised Signatory of the Importing Country

5. Item number	6. Marks and numbers on Packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)	8. Origin criterion (see Notes overleaf)	9. Gross weight or other quantity and value (FOB)	10. Number and date of invoices
1	N/M	13 CASES COLD ROLLED COATED STAINLESS STEEL SHEET 13 AS PER INVOICE NO MB191007-18 DATED 22ND-NOV-2019 HS CODE 721990 CONTAINER NO: DRYU2958691 IMPORTING COUNTRY HS CODE: 72199090	WO	27850 KGS USD 38905.00	MB191007-18 22/11/2019
		Page 1 of 1	TOTAL	27850 KGS USD 38905.00	

11 Declaration by the exporter
The undersigned hereby declares that the above details and statement are correct; that all the goods were produced in
MALAYSIA
(Country)
HARD METAL TRADE SDN BHD
and that they comply with the origin requirements specified for these goods in the ASEAN-INDIA Free Trade Area Preferential Tariff for the goods exported to
INDIA
(Importing Country)
Signature Not Verified
Digitally signed by Jitender Kumar
Date: 2019.12.16 17:39:29 IST
Reason: Secure Document
Location: India
Place and date, signature of authorised signatory

12. Certification
It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.
MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY
for Secretary General
Ministry of International Trade and Industry
Malaysia
Kuala Lumpur, 16 December
MARIA HASSAN
Place and date, signature and stamp of certifying authority

13. Where appropriate please tick:
☐ Third Country Invoicing ☐ Exhibition ☐ Back-to-Back CO ☐ Cumulation

6/9/2021.

12.3. From the letter reproduced above, we find that the letter contains an annexure containing a list of 87 certificates which were found to unauthentic by MITI. We find that the investigation against the Appellant was initiated on the basis of communications (exchange of e-mails) between MITI and Government of India wherein a list of 143 COOs were sent for verification. After verification, the report received from MITI vide e-mail dated 14.04.2021 revealed that based on their assessment out of the 143 COOs, 87 were not authentic and they were not issued by the MITI. We have perused the list of 87 COOs found to be unauthentic by the MITI authorities. We find that in the list of 87 unauthenticated COOs, there is only one COO submitted by the Appellant vide Reference No.KL-2019-AI-21-018819 Dated 16.12.2019 – issued by the supplier Hard Metal Trade SDN BHD was found to be unauthentic.

12.4. In respect of this one COO found to be not genuine, the Appellant submitted that there is an error in recording the correct COO number while drawing the panchanama.The submission of the Appellant is that the goods covered under B/E No. 6101337 dated 16.12.2019 were seized by the officers of ICD, Dadri vide Panchnama dated 14.01.2020 (RUD-2 placed at Pg. No. 295 – Paper-Book-2 of the Appeal). At the time of seizure the officers also seized B/E No. 6101337 dated 16.12.2019 along with COO bearing No. KL-2019-AI-31-018231 dated 29.11.2019, (which is part of RUD-2). However, DRI has mentioned incorrect COO number in the Notice issued. COO No. KL-2019-AI-31-018231 dated 29.11.2019, which is the correct COO number is not mentioned in the list of 87 unauthentic COOs enlisted in the email received by the department from MITI. Thus there is, in fact, none of the COOs submitted by the Appellant in respect of the consignments imported from Malaysia, is appearing as unauthentic. Also there is no such evidence brought on record by the investigation. Upon scrutiny of the relevant documents, we find that there is an error in the COO number. The correct COO number submitted along with the B/E No. 6101337 dated 16.12.2019 was KL-2019-AI-31-018231 dated 29.11.2019, In support of this claim, the Appellant submitted copy of the said COO, along with the corresponding Bill of Entry, Panchnama, commercial invoice, and marine insurance document. On perusal of the document submitted by the Appellant, we find that there is an error in mentioning the COO number with respect to the goods imported by the Appellant vide B/E No. 6101337 dated 16.12.2019. A perusal of the said list containing 87 CCsOs which are not genuine and the supporting documents submitted by the Appellant demonstrate that none of the COOs submitted by the Appellant was fake. Thus, we observe that the entire case has proceeded on an erroneous factual premise arising from a typographical or recording error, without any independent verification of the remaining COOs. Thus, we hold that there is no case for rejection of the Country of Origin Certificates filed by the Appellant.

12.5. Further, we observe that as per the Rules of Origin, the supplier of the originating country has obtained the COO Certificates from the concerned ministry and furnished the same to them. If the certificates were valid at the time of import, it could not be disputed by the Custom authorities at a later stage, as held by the Tribunal, Kolkata in the case of Shri Shyam Synthetics Versus Principal Commissioner of Customs vide Final Order 75381/2025 dated 18th February 2025, by following the ratio of the judgment of the Hon'ble Supreme Court in the case of Sampat Mal Dugar– Union of India 58 ELT Page 163 (SC).

12.6. In respect of all the COOs submitted by the Appellant, we find that the said COOs were issued by the suppliers in relation to the import of the goods by the Appellant from the respective suppliers. In the said letter received from MITI, it has been mentioned that MITI had never received any COO applications from the respective companies. We find that the department has interpreted the letter that none of the COOs submitted by the Appellant for the imports made from the supplier were authentic. We find that this interpretation of the department is not supported by any evidence. When there is no finding regarding the genuineness of the other COOs submitted by the Appellant, it cannot be presumed that all COOs submitted by the Appellant in respect of the import from the respective suppliers were not authentic. It is a fact on record that the issuing authority has not cancelled any of the COOs submitted by the Appellant in respect of the imports made from Hard Metal Trade SDN BHD or any other supplier. Even this COO found to be unauthentic by MITI has not been cancelled. Since, this COO number mentioned in the report containing 87 unauthentic COOS was not submitted by the Appellant, we hold that all the COOs submitted by the Appellant cannot be rejected as unauthentic. Once the COOs are found to be not fake, the Appellant would be eligible for the benefit of Notification No.46/2011-Cus dated 01.06.2011. Thus, we hold that the Appellant is eligible for the benefit of exemption as provided under the Notification No.46/2011-Cus dated 01.06.2011, in respect of all the COOs submitted by them.

12.7. So far as all the COOs submitted by the Appellant is concerned, we find that as on the date of import, the Certificate of Origin meets the requirement, with the Overseas Exporter giving the declaration and the same being authenticated by the Authorized Officials of the Malaysian Government. Their Signatures have been verified by the Customs officials and only after this, the consignments have been allowed to be imported under concessional rate of duty, by the Proper officer. Thus, we find that the requirements under the Notification have been met on the date of import. The same cannot be negated by a subsequent communication received from Malaysia after more than 2 years, without coming out with the details of the contravention and action being taken by them. We find that none of certificates was cancelled or revoked by the Govt of Malaysia. In such a case, no claim can be made on an importer who relied upon the certificates issued by the Authorized Officials of the exporting country. There is nothing to indicate that the appellant has in any way colluded with the alleged irregularity pointed by the Govt of Malaysia, after 2 years of issue of the Certificates of Origin.

12.8. If the certificates were valid at the time of import, it could not be disputed by the Custom authorities at a later stage, as held by the Tribunal, Kolkata in the case of Shri Shyam Synthetics Versus Principal Commissioner of Customs vide Final Order 75381/2025 dated 18th February 2025, by following the ratio of the judgment of the Hon'ble Supreme Court in the case of Sampat Mal Dugar– Union of India 58 ELT Page 163 (SC). The appellant also relies on the Final Order dated 18.2.2025, particularly relies on the Paragraphs 8.6, 8.7 and 8.8 of the judgement which are reproduced below for ready reference:-

> "8.6. We also observe that there is no document of revocation of the four certificates either addressed to the exporter or the importer. to whom it would have been issued had it been actually issued or had it been part of a formal communication. There is no authenticity of certification by any Authority of Thailand for attestation as held by the Honourable Supreme Court in the case of Collector of Customs, Bombay versus East Punjab Traders reported in 1997 (89) E.L.T. 11 (S.C.).
>
> 8.7. We observe that apart from the three letters, there is no material in the Show Cause Notice, suggesting revocation of the certificate of origin or making of retroactive check also. Thus, we find that there is also no document enclosed in the notice issued by any designated authority of India in this regard. We are of the view that the retroactive check is to be accompanied by certificate of origin and the reasons as to why retroactive check is requested are to be specified. However, we find that there is no such document available in this case.
>
> 8.8. It is also settled law that the if certificates at the time of import were valid, then their validity cannot be questioned on the basis of surmises. In this case, the evidences submitted by the investigation does not conclusively prove that the COOs submitted by the appellant were not genuine. On the contrary, the evidences submitted by the appellant indicate that the COOs submitted by the

appellant are indeed genuine. Accordingly, we hold that the appellant had rightly availed the benefit of Notification No. 46/2011-Cus. dated 01.06.2011 on 16 Bills of Entry by presenting 16 country of origin certificates. Consequently, we hold that the impugned order passed by rejecting the benefit of the said notification is not sustainable."

12.9. In the present case, after going through the Certificates of Origin reproduce above, it is observed that as the Declaration is duly signed by the exporter and the Certificate of Origin has been duly issued by the Designated authority, whose signature has been verified by the Indian Customs Officials. Therefore, prima facie, that all the due diligence verification, including verification of the documents supplied by the exporter, pre-exportation verification etc., have been duly carried out by the Designated authority at Thailand. There is no scope to doubt as to whether the due verification has been done or not, so long as the authenticity of the Certificate of Origin and its Authorized Signatories are found to be is not found to be fabricated. We have perused the communication received from MITI, which states that 87 of the 143 COOs are unauthenticated and hence the consignments do not qualify for the Preferential Treatment. In this regard, we observe it is to be taken that the Importers and Govt of India has been erroneously lead to believe that the goods qualify for the Preferential Treatment in the first place. Therefore, it becomes a matter to be sorted between both the Governments to ensure that proper action is taken against the contravening party.

12.10. From the documents available on record, we find that the Appellant has imported goods from various suppliers from Malaysia. We find that the COOs submitted by the Appellant for import from the respective suppliers were found to be genuine. Accordingly, we hold that there is no merit in denying the benefit of Notification No.46/2011-Cus in respect of the imports covered by the Country of Origin Certificate submitted by the Appellant, from the respective suppliers.

13. Regarding the classification of the goods, we find that the Appellant had classified the goods imported by them under the CTH 7326, whereas the department contended that the correct classification of the impugned goods would be under the CTH 7219 of the Customs Tariff Act, 1975. The classification of the imported goods under the Customs Tariff must necessarily be decided on the basis of the specific nature, composition and tariff entries applicable to the goods imported by the Appellant, read with the relevant Section Notes, Chapter Notes, Rules for Interpretation. In the present case, it is alleged that the Appellant has imported 'Decorative Design of Wall Pannel Stainless Steel Sheet' and classified the same wrongly under the heading 73269060. The said goods have been imported from Malaysia. The Department observed that the Appellant has imported similar goods from China with the description 'Colour Coated Cold Rolled Stainless Steel Sheets' and classified the same under the CTH 72199090. The allegation of the Department is that there is no difference in the sheets imported from Malaysia by declaring the Sheet under the CTH 7219 and the Sheets imported from China by declaring the classification under CTH 7326. It is alleged that the manufacturing process and the end use of SS Sheets imported from Malaysia and China were same. Accordingly, Department alleged that Decorative Design Stainless Steel Profiles Grade J3 were also PVD coated Cold Rolled Stainless Steel Sheets of U shape and the said items were correctly classifiable under the CTH 7219.

13.1. In this regard, we find that the goods namely "Decorative & Design Sheet Article of Wall Panel Grade J-3" and "Decorative Design Stainless Steel Profile Grade J-3" imported at the port of ICD, Sonepat and "Cold Rolled Coated Stainless Steel Sheets J-3" imported at ICD, Dadri were classified by the Appellant under CTH 7326. It is an admitted fact that the classification of the goods depends upon their actual form, composition, width, thickness, degree of processing and whether the goods had retained the character of flat-rolled stainless steel products or had assumed the character of distinct articles. In the present case, we find that the proper officer has examined the goods and accepted the classification of the goods as declared in the Bills of Entry. No objection was raised. Subsequently, if the department wants to re-classify the goods imported and cleared, then there must be specific reasons supported by evidence. In the present case, we find that no representative samples of the seized consignments were drawn at the time of examination or seizure of the goods for testing/chemical analysis by any recognized laboratory or technical agency. In the absence of any test report or expert opinion, the finding that the goods were classifiable under CTH 7219/7220 is based merely on assumptions and presumptions. The said findings is not supported by the opinion of any technical experts in the field. The reclassification, therefore, is not sustainable, particularly in respect of goods described as stainless ssteel profiles/articles, unless the Department first discharges its burden by producing cogent technical evidence.

13.2 We find that the goods in question were coated with PVD (Physical Vapour Deposition) to impart desired colour viz. Gold, silver etc. Thus, it is clear that the goods are further worked than cold rolled sheets and hence they become out of the purview of CTH 7218, 7219 or 7220 because the said CTHs cover stainless steel products "not further worked than cold rolled ....". The said goods were not mere flat-rolled sheets, but had acquired the character decorative wall-panel of articles/profiles/manufactures of stainless steel, and no technical test or expert evidence was produced by the Department to prove otherwise.

13.3 We find that the goods covered under CTH 7219 are subject to BIS specification under IS 6911: 2017 (Annexure A-20) wherein specifications in respect of stainless steel plates, sheets and strips are specified, whereas the goods imported by the Appellant are of Grade 202J-3 and as such is not covered under the IS 6911: 2017. (Para F.11 of the appeal refers). The articles of Stainless Steel imported by the Appellant had different thickness ranging from 0.56 mm to 1.2 mm for use in front glazing of a building. Therefore, we are of the view that the goods in question cannot be treated as mere plates, sheets and strips under CTH 7219 but are correctly classifiable under the CTH 7326 90 60 of the Customs Tariff Act, 1975.

13.4 In absence of test report from recognized laboratory and considering the actual nature of the products in question, we hold that the findings of the learned Respondent with regard to their classification under CTH 7218/7219 is not sustainable. If the Department wants to classify the goods under a heading different from the heading claimed by the importer, the burden is on the Revenue to adduce proper evidence and discharge that burden. The Supreme Court in H.P.L. Chemicals Ltd. v. CCE, Chandigarh, 2006 (197) E.L.T. 324 (S.C.) held that when the Department seeks a different classification, it must produce proper evidence; mere assertion is not sufficient. The same principle was reiterated in Hindustan Ferodo Ltd. v. Collector of Central Excise, 1997 (89) E.L.T. 16 (S.C.), where the Supreme Court held that if Revenue fails to lead evidence to establish its proposed classification, the assessee's appeal should succeed even if the assessee's own evidence is rejected.

13.5 We find that the confirmation of demand of CVD on the goods imported by the Appellant under Notification No. 01/2017-Customs (CVD) dated 07.09.2017 by the learned Respondent is based on the ground that as the COO Certificates presented by the Appellant were non-authentic and that the goods are classifiable under the CTH 7218 / 7219. In this regard, we observe that the COO Certificates produced by the Appellant before the Customs Officers at the time of assessment are genuine / authentic (except the one COO mentioned in the list provided by the MITI) and that the goods imported by the Appellant are correctly classifiable under the CTH 7326 as stated in the preceding paragraphs. Therefore, we hold that the findings of the learned Respondent with regard to levy of CVD under Notification No. 1/2017-Cus holding the goods actually of Chinese origin is not sustainable and is liable to be dropped.

13.6. We find that the Appellant has imported the goods on earlier occasions and the said goods were cleared by proper officer on payment of appropriate duty of Customs. There was no objection raised regarding classification of goods claimed by the Appellant under the CTH 7326 90 60. If the Department wants to classify the goods under any other different heading than the heading declared by the importer, the burden is on the Revenue to adduce proper evidence and discharge that burden for reclassification. In the present case, we find that the Department has not drawn any samples even in respect of the present consignment. There were no samples drawn to analyze the difference in thickness and quality of the SS profiles/articles etc. imported by the Appellant.

13.7. We find that the Department has solely relied upon the statements of Shri Shreyance Jain to reclassify the good under CTH 7219. In this regard, we observe that Shri Shreyance Jain has retracted the statement given by him on 17.12.2019, 24.10.2019, 25.10.2019, 04.03.2019, 05.03.2020, 06.03.2020, 01.02.2021 & 06.09.2021. We find that the Adjudicating Authority has not followed the provisions of Section 138B of the Customs Act, 1962 for relying on the statement recorded from Shri Shreyance Jain. We find that the goods have been reclassified on the basis of the statements of Shri Shreyance Jain.

13.8. This issue has been held by the Hon'ble Supreme Court in the case of H.P.L. Chemicals Ltd. V. CCE, Chandigarh, 2006 (197) E.L.T. 324 (S.C.) and in the case of Hindustan Ferodo Ltd. V. Collector of Central Excise, 1997 (89) E.L.T. 16 (S.C.). As there is no evidence other than the statements recorded and since statements of Shri Shreyance Jain cannot be relied upon as provision of Section 138B has not been followed, we observe that reclassification of goods imported by the Appellant is illegal and not sustainable. Accordingly, we hold that the goods imported by the Appellant are properly classifiable under CTH 73269060 of the Customs Tariff as claimed by the Appellant.

14. Regarding valuation of the goods, we observe that learned Adjudicating Authority has rejected the declared transaction value and enhanced the value on the basis of contemporary

import. We find that the Adjudicating Authority has not followed the provisions of Rule 9 of the Customs Valuation Rules, 2007 for the purpose of enhancement of value. There is no evidence available on record that the Appellant has paid any amount over an above the declared invoice prices. Further, we find that there is no documentary evidence available on record to show that the Appellant has paid any amount over and above the declared value. In that circumstances the rejection of the transaction value declared by the Appellant is legally not sustainable. We find that this view has been held by Hon'ble Supreme Court in the case of Eicher Tractor Ltd. V/s Commissioner of Customs, Mumbai reported at 2000 (122) E.L.T. 321 (S.C.) and in the case of Commissioner of Customs, Calcutta V/s South India Television P. Ltd. reported at 2007 (7) TMI 9 - (Supreme Court). Thus, by relying on the decisions cited supra, we hold that the value declared by the Appellant cannot be rejected. Thus, we hold that the enhanced value re-determined by the Revenue is not sustainable and hence, we set aside the same.

15. Regarding the penalties imposed on the Appellant, we find that the penalties have been imposed on the allegation of mis-declaration and undervaluation of the impugned goods by the Appellant. In view of the findings in the preceding paras, it has been held that the allegations of mis-declaration and undervaluation of the impugned goods are not sustained. Thus, we hold that suppression of facts with intention to evade the tax has not been established in this case. Accordingly, we hold that no penalty imposable on the Appellant and hence we set aside the same.

16. In view of the above findings, we pass the following order:

(i) We hold that all the Country of Origin Certificates furnished by the Appellant to the Customs authorities are authentic and acceptable.

(ii) As the COO Certificates are authentic, the Appellant would be eligible for the benefit of exemption as provided under the Notification No.46/2011-Cus dated 01.06.2011 for all the consignments.

(iii) We hold that the Goods imported by the Appellant are appropriately classifiable under the CTH 7326, as claimed by the Appellant. Accordingly, we reject the re-classification of the impugned goods by the Revenue, under the CTH 7219 of the Customs Tariff Act, 1975.

(iv) We hold that the value declared by the Appellant in the Bills of Entry are acceptable and hence, reject the value re-determined by the Ld. Adjudicating Authority in the impugned order.

(v) As the allegation of mis-declaration and undervaluation of the impugned goods are not sustained, we hold that no penalty imposable on the Appellant.

(vi) The appeal filed by the Appellant is disposed of on the above terms.

(Pronounced in open court on 12.08.2026)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Nihal