IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Customs Appeal No.75756 of 2026

(Arising out of Order-in-Original No. KOL/CUS/PR. COMMISSIONER/PORT/ ADJN/49/2026 dated 15.05.2026 passed by Commissioner of Customs (Port), Kolkata.)

M/s Truth Udyog Metal & Steel Pvt. Ltd,
(Rangolo Mall, Room No. 321, 3rd Floor, 212,
Girish Ghosh Road, Belur, Howrah-711202)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

.....Respondent

(15/1, Strand Road, Custom House, Kolkata-700001.)

WITH

Customs Appeal No.75757 of 2026

(Arising out of Order-in-Original No. KOL/CUS/PR. COMMISSIONER/PORT/ ADJN/49/2026 dated 15.05.2026 passed by Commissioner of Customs (Port), Kolkata.)

Shri Manoj Goyal,
(Forum Pravesh, Block H, Flat No. 502, 5th Floor, 212, Girish Ghosh Road,
Bally (M), Howrah, West Bengal-711202)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

.....Respondent

(15/1, Strand Road, Custom House, Kolkata-700001.)

AND

Customs Appeal No.75758 of 2026

(Arising out of Order-in-Original No. KOL/CUS/PR. COMMISSIONER/PORT/ ADJN/49/2026 dated 15.05.2026 passed by Commissioner of Customs (Port), Kolkata.)

Shri Nikunj Goyal,
(Forum Pravesh, Block, H, Flat No. 502, Girish Ghosh Road,
Bally (M), Howrah West Bengal-711202)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

.....Respondent

(15/1, Strand Road, Custom House, Kolkata-700001.)

APPEARANCE

Shri Sudhir Mehta, Advocate for the Appellant (s)

Shri Samir Chitkara & Shri S. Debnath, both Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 76330-76332/2026

DATE OF HEARING : 18.09.2026
DATE OF DECISION : 06.10.2026

Per : R. MURALIDHAR :

The appellant is a dealer in steel scrap. In the usual course of its business, the appellant imports metallic waste and scrap, as permitted under the Foreign Trade Policy, and sells the same to actual users, including steel plants engaged in the manufacture of steel, where the value of the metal is recovered from the scrap. In the normal course of its business, the appellant imported a consignment of 100 metric tonnes of goods under Bill of Entry No. 6999824 dated 2 December 2024, declaring the goods as scrap. The appellant has classified the imported scrap under CTH 72042190. The goods were shipped after Pre-shipment examination of the goods at the load port. The goods after landing were subjected to 100% examination for assessment of the goods. Both the appraiser and the examination officer inspected the cargo 100 percent and recorded their report that the goods were scrap. Notwithstanding the aforesaid examination, the Department requisitioned a Chartered Engineer, Mr.Tapankar Bhagat, for a further examination. The

Chartered Engineer examined the goods on 29 May 2025 and declared the goods to be scrap.

2. In the meantime, the appellant imported a second consignment of 151.69 metric tonnes of scrap and filed Bill of Entry No. 7088851 dated 6th December 2024 classifying the goods under CTH 72042190. The second consignment was also subjected to 100% examination. However, the goods were not examined by the appraisers for a considerable period, and more than a month elapsed before the assessment proceedings commenced. The investigating authority thereafter initiated investigation in relation to Bill of Entry No. 7088851 dated 6 December 2024 and directed that the goods be sent for testing and that Chartered Engineers be requisitioned for their reports. The Department requisitioned Chartered Engineer Mr. Saket Konar, who furnished two reports on the basis of visual examination. The reports stated that, on visual examination, the goods did not appear to be scrap; however, for final determination, a chemical test would be required.

3. Another consignment of 150 metric tonnes was imported under IGM No. 239466 dated 11 December 2024, where it was also declared as scrap. By this stage, the appellant had realised that the detention, demurrage, damage and related charges associated with the import and clearance of scrap were exceeding three to four times the value of the goods. The appellant therefore concluded that continuation of this line of import business was not commercially viable. Accordingly, the appellant did not file a Bill of Entry for clearance of the goods arrived under IGM No. 239466 dated 11 December 2024 and informed the seller that it would not file a Bill of Entry. The goods covered by the said IGM, notwithstanding that no Bill of Entry had been filed by the appellant, were also examined. On the basis of their size and shape, it was stated that the goods were not scrap.

4. A show cause notice was issued alleging that the goods did not bear the BIS mark and, consequently, that there was a breach of the Steel Control Orders. On that basis, the goods were alleged to be liable to confiscation. The show cause notice also covered the goods imported and cleared under Bill of Entry No. 6999824 dated 2nd December 2024, even though those goods had already been released by the Department. In respect of all the three consignments the appellant had classified the goods [scrap] under CTH 7204 2190. The Revenue has held the goods are prime material with steel grade 430 and accordingly has classified the goods under CTH 7220 2090. The SCN also proposed penalties on the importing company and its Directors. The appellants filed their detailed replies justifying their stand that the goods imported were indeed scrap and not prime steel items. However, the Adjudicating authority after due process, confirmed the demand holding that the goods are classifiable under CTH 7220 2090. He imposed penalties on the company and also imposed penalties against the Directors. Being aggrieved, the company and Directors have filed their appeal before the Tribunal.

5. The Ld Senior Counsel, appearing on behalf of the appellant makes the following submissions:

5.1 In respect of the first consignment under B/E No. Bill of Entry No. 6999824 dated 2 December 2024, the following submissions may be taken on record.

5.2 In the normal course of its business, the appellant imported a consignment of 100 metric tons of goods under Bill of Entry No. 6999824 dated 2 December 2024, declaring the goods as scrap. The

goods were shipped after Pre-shipment examination of the goods at the load port.

5.3 The goods after landing were subjected to 100% examination for assessment of the goods. Both the appraiser and the examination officer inspected the cargo 100 percent and recorded their report that the goods were scrap.

5.4 Notwithstanding the aforesaid examination, the Department requisitioned a Chartered Engineer, Mr. Tapankar Bhagat, for a further examination. The Chartered Engineer examined the goods on 29 May 2025 and declared the goods to be scrap.

5.5 The goods had been imported on 2nd December 2024 and, in the ordinary course the goods would be expected to be released within a short period of 3 days which is the normal course. However, owing to the dispute raised by the Department and the insistence upon 100% examination and further verification, the goods remained detained for approximately eight months. The demurrage and related charges incurred during this period amounted to approximately three times the value of the goods.

5.6 Only thereafter did the assessing authority release the cargo. The appellant was burdened with approximately Rs.2.60 crore towards demurrage charges and ship/container charges. The appellant was compelled to take release of the goods because they had made full payment for the consignment and was in possession of the documents of title.

5.7 It is submitted that the consignment in question was allowed to be cleared for Home Consumption only after due examination by the Customs Officials and the report given by the Chartered Engineer

engaged by the Revenue. The test reports and test results of subsequent consignments cannot be made the basis for demanding the differential duty in respect of the duly examined and cleared consignment. Therefore, the Revenue has no case whatsoever to demand the duty on the consignment of 100 metric tons of goods under Bill of Entry No. 6999824 dated 2 December 2024.

5.8 Admittedly, the consignment of 100 metric tons have already been cleared from the Customs after proper assessment and the same is no more available for confiscation.

5.9 Therefore, it is prayed that the confirmed demand of Duty, interest, penalty and Redemption Fine imposed on the 100 Metric tons, in respect of the first consignment under B/E No.6999824 dated 2 December 2024 may be set aside.

5.10 The appellant imported a second consignment of 151.69 metric tons of scrap and filed Bill of Entry No. 7088851 dated 6th December 2024.

5.11 In respect of this consignment, the appellant had paid only 10% of the purchase consideration as advance at the time of indenting and had not obtained the bill of lading or other documents of title as owner of the goods.

5.12 This consignment was also subjected to 100% examination. However, the goods were not examined by the appraisers for a considerable period, and more than a month elapsed before the assessment proceedings commenced.

5.13 The investigating authority thereafter initiated investigation in relation to Bill of Entry No. 7088851 dated 6 December 2024 and

directed that the goods be sent for testing and that Chartered Engineers be requisitioned for their reports.

5.14 The appellant's contention before the Department was that the goods were not BIS-marked and that the dispute had arisen principally because of the form and size of the sheets. The absence of BIS marking, it was submitted, did not by itself establish that the goods were not scrap.

5.15 The Department requisitioned Chartered Engineer Mr. Saket Konar, who furnished two reports on the basis of visual examination. The reports stated that, on visual examination, the goods did not appear to be scrap; however, for final determination, a chemical test would be required. The said reports are at pages 86 and 87 of the appeal memo.

5.16 The Department also sent the goods to the Customs Laboratory. The laboratory reported that, on the basis of their physical appearance, the goods appeared not to be scrap. The report, however, was based on physical appearance, and no chemical analysis determining the nature and composition of the steel was undertaken.

5.17 Since the appellant was not allowed to take release of the goods, they did not obtain release of the documents from the bank, the appellant abandoned the consignment and requested the foreign seller to recall the documents. The foreign seller recalled the documents and sold the goods to another buyer, namely Himadri Himgiri Build Corn and Industries Limited, which thereafter applied for amendment of the manifest. The amendment was not permitted. But due to delay it also backed out. The goods remain at the CFS incurring demurrage charges.

5.18 It is submitted that neither the Chartered Engineer's Certificate nor the CRCL's lab report conclusively proves that the goods are not scrap. As a matter of fact, the appellant has obtained the Certificate towards the goods being scrap from the authorized agency of the exporting country. This Certificate has not been rebutted by the Revenue. Further, the BIS standard clearly specifies the norms for Prime material. If the norms are not met, then the goods have to be treated as scrap only. These aspects have not been considered by the Adjudicating authority.

5.19 The importability of scrap is not dependent upon its size or shape; paragraph 2.32 of the Foreign Trade Policy permits the import of scrap which may be in any form. Photograph of the Scrap being sold by Tata Steel is enclosed, wherein by visual examination, it would look like proper material only. It is to be understood that even if the prime material is found to be defective on any of the quality paramaters, the same is required to be disposed off as scrap only. Therefore, when the scrap has been imported by the appellant with proper certificate from the overseas agency to this effect, the same cannot be brushed aside on account of size and form.

5.20 The appellant submits that, since the Department's case was founded upon alleged non-compliance with BIS specifications, the relevant BIS standards and prescribed testing methods had to be examined and applied before any conclusion could be reached as to whether the goods were compliant prime material or scrap.

5.21 Under the applicable BIS specifications and product manual, the prescribed methods of testing are required to be followed. In the absence of such testing, it cannot properly be concluded that the goods comply with the relevant BIS specifications.

5.22 The appellant also submits that the chemical composition and applicable requirements vary according to the grade and type of steel, including ferritic, martensitic and austenitic steels and the specified limits for components such as carbon. These matters require testing in accordance with the methods prescribed under the relevant BIS standard.

5.23 A copy of the relevant BIS standard and BIS Product Manual, setting out the applicable testing requirements, is annexed hereto and marked as **Annexure A.**

5.24 The dispute raised by the Department rests essentially upon visual appearance, photographs, size and shape. No chemical composition test was carried out, and no laboratory report was produced identifying the nature and ingredients of the steel in accordance with the testing methodology prescribed under the BIS Product Manual.

5.25 Accordingly, without the prescribed chemical and other relevant testing, the Department could not establish that the goods complied with the BIS standard or that they were prime material rather than scrap.

5.26 The appellant submits that goods which do not comply with the applicable Steel Control Order are required to be treated as scrap. In the present case, the goods had failed the relevant test, and the foreign supplier itself treated and exported the goods as scrap. The definition of scrap referred to by the appellant the Customs Tariff Act also recognises that goods which are not utilisable by reason of statutory restrictions or otherwise are to be treated as scrap.

5.27 The foreign seller also submitted itself to the jurisdiction of the investigating authority and, in its communication, stated that the goods were scrap. Nevertheless, in the absence of any chemical test, the goods were disputed and the allegation was made that they were not scrap and were capable of complying with the BIS standard.

5.28 A copy of the applicable Steel Control Order is annexed hereto and marked as **Annexure B.**

5.29. The value given in the Invoice of the overseas exporter will clarify that the price is that of scrap and not that of prime material. The declared value in the Invoice is @ USD 628 per ton. The Revenue itself has enhanced the value to USD 1350 per ton, which is the value applicable only for Prime materials. No exporter would sell the Prime material at the value of scrap. The Revenue has not come out any evidence to the effect that the appellant has paid any additional amount for the consignment imported by them. Therefore, even on this ground, the Revenue's argument that the goods are Prime in nature is erroneous.

5.30 The appellant relies upon the following decisions, as cited in the appeal memo:

- AL Uday Exit LLP v. Collector of Customs,Nagpur, reported in 2026 45 Centex 19.
- NV Rambabu v. Additional Director General, reported in 2026 41 Center 7 (Try-Bombay).
- Naveen Impex, reported in 363 E.L.T. 841.

5.31 The aforesaid decisions, as relied upon by the appellant, lay down that, where the nature of the goods as scrap is in dispute, a conclusion

cannot properly be drawn merely from their size or physical appearance without the requisite chemical testing/report.

5.32 In view of the above submissions, it is prayed that the confirmed demand, penalty and the Redemption Fine in respect of the second consignment may be set aside.

5.33 Another consignment of 150 metric ton was imported under IGM No. 239466 dated 11 December 2024, where they were also declared as scrap. By this stage, the appellant had realized that the detention, demurrage, damage and related charges associated with the import and clearance of scrap were exceeding three to four times the value of the goods. The appellant therefore concluded that continuation of this line of import business was not commercially viable.

5.34 Accordingly, the appellant did not file a Bill of Entry for clearance of the goods arrived under IGM No. 239466 dated 11 December 2024 and informed the seller that it would not file a Bill of Entry.

5.35 The goods covered by the said IGM, notwithstanding that no Bill of Entry had been filed by the appellant, were also examined. On the basis of their size and shape, it was stated that the goods were not scrap.

5.36 Without any Bill of Entry being filed, without any examination being undertaking, without any Chemical examination being done, the Adjudicating authority has imposed penalty in respect of this consignment.

5.37 The appellant further relies upon **Chemsworld Inc., reported in 305 E.L.T. 153,** for the proposition that where a person has not filed a Bill of Entry, such person cannot be treated as the importer for the purpose of imposing a demand, fine or penalty.

5.38 Therefore, the Ld Senior Counsel submits that the penalty imposed in respect of the third consignment may be set aside.

5.39 Penalty on Manoj Goyal under section 114AA of Rs.1,00,00,000 was imposed though he was not charged for section 114AA. No specific finding has been given about his role so as to impose the penalty.

5.40 Penalty on Nikunj Goyal under section 114AA of Rs.1,00,00,000 was imposed though he was not charged for section 114AA. No specific finding has been given about his role so as to impose the penalty.

5.41 In the subject case no penalty is proposed against the company under Section 114 AA of the Act and not imposed also. If the company is not charged for penalty under section 114 AA in that event the Directors / managers can not be made liable for penalty since the issue would be action of the company. Vicarious liability would come when the company is not held liable.

5.42 Hence, it is prayed that the penalties imposed on the appellant Directors may be set aside.

6. To summarize the submissions of the appellant:

6.1 The first consignment was cleared after due examination by the Chartered Engineer on payment of Customs Duty and have also been sold in the domestic market as scrap. They are not available for confiscation. Hence, the duty demand, penalty imposed and the RF imposed may be set aside.

6.2 In the case of the Second consignment, which pertains to the live Bill of Entry, the appellant has brought in proper documentary evidence to the effect that the goods imported is scrap only. The evidence relied upon by the Revenue do not conclusively prove that the imported goods are Prime material. Hence, the duty demand, penalty imposed and the RF imposed may be set aside.

6.3 In respect of the third consignment, no Bill of Entry has been filed. No examination / quality control report has been generated. Hence, the penalty imposed may be set aside.

6.4 No proper evidence has been brought in to implicate the Directors with the allegation of mis-classification of goods. Hence, the penalties imposed on them may be set aside.

7. The appellant has suffered losses of more than Rs.2 crores on account of damage charges and related expenses arising from prolonged detention of the goods. The other consignments likewise suffered prolonged detention and consequential costs. In these circumstances, the appellant submits that it is entitled to seek appropriate waiver/relief under the Handling of Cargo in Customs Area Regulations in respect of the amounts paid to warehouse operators and container freight companies, to the extent permissible in law.

8. In the circumstances aforesaid, the appellant respectfully submits that the appeal be allowed; the findings of the adjudicating authority be set aside; the detention and seizure/confiscation proceedings be declared unsustainable in law; the penalty imposed in respect of the goods for which no Bill of Entry was filed be set aside; and such further reliefs, including appropriate relief in respect of the charges incurred

due to detention, as may be permissible in law, be granted in favour of the appellant.

9. The Ld. A R, appearing for the Revenue submits that the goods in question in the form, which cannot be treated as 'scrap'. The second consignment was put for examination before the Chartered Engineer, who has given the report that the same cannot be treated as Scrap. Even the examination taken up by the Chemical Lab has shown the goods are of Prime material. Therefore, he justifies the confirmed demand, interest, penalties and the RF imposed.

10. Heard both the sides. Perused the appeal papers and further documentary evidence submitted by the appellant.

11. Based on the above submissions and documents on record, we find the issue can be bifurcated as under:

(a) **About 100 MT of scrap has been imported on 2nd December 2024**:

No dispute about the valuation at the time of clearance. The goods have been examined and also Chartered Engineer's Certificate dated 29th May 2025 has been accepted and goods have been allowed to be cleared as scrap by way of Bill of Entry, wherein the assessment is final. The goods, though not available for confiscation, have still been confiscated absolutely.

(b) **Under Bill of Entry No.7088851 dated 6.12.2024, the appellant has imported 151.69 MT as scrap**. Chartered

Engineer's Certificate and the Lab Report of the CRCL is relied on the hold that the goods in question are not scrap, but are prime material. Accordingly, the Assessable Value has been enhanced. The consignment has been confiscated absolutely.

(c) **The appellant has imported about 150 MT of scrap under IGM No. 239466 dated 11 December 2024**. No Bill of Entry has been filed. But the goods have been subjected to examination and Lab test. The goods have been confiscated absolutely. The value has been enhanced.

12. Since the issue in the present case that import of Metallic Waste and Scrap as claimed by the appellant, it would be important to go through the relevant provisions of Foreign Trade Policy.

Foreign Trade Policy :

Import Policy for Metallic Waste and Scraps:

2.32 Import of Metallic Waste and Scrap

(a) Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste/scrap containing radioactive material, any types of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise as detailed in Para 2.51 of Handbook of Procedures.

(b) The types of metallic waste and scrap which can be imported freely, and the Procedures of import in the shredded form; un-shredded, compressed and loose form is laid down in Para 2.51 of Handbook of Procedures.

HANDBOOK OF PROCEDURES :

2.51 Import of Metallic Waste and Scrap Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste / scrap containing radioactive material, any type of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise.

(a) Import of following types of metallic waste and scrap will be free subject to conditions detailed below:

Sl. No.	Exim Code	Item description
1.	720410 00	Waste and scrap of cast iron
2.	72042190	Other
3.	72042920	Of High-speed steel
4.	72042990	Other
5.	72043000	Waste and scrap of tinned iron or Steel
6.	72044100	Turnings, shavings, chips, milling waste, saw dust, fillings, trimmings and stampings, whether or not in bundles
7.	72044900	Other
8.	72045000	Re-melting scrap ingots
9.	74040012	Copper scrap
10.	74040022	Brass scrap
11.	75030010	Nickel scrap
12.	76020010	Aluminium scrap
13.	79020010	Zinc scrap

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14.	80020010	Tin scrap
15.	81042010	Magnesium scrap

(b) 'Freely' Importable metallic waste and scraps (shredded) as listed above shall be permitted through all ports of India subject to following conditions:

(i) At the time of the clearance of goods, importer shall furnish to the Customs pre-shipment inspection certificate as per the format to Appendix 2H from any of the Inspection & Certification agencies given in Appendix-2G, to the effect that the consignment was checked for radiation level and scrap does not contain radiation level (gamma and neutron) in excess of natural background. The certificate shall give the value of background radiation level at that place as also the maximum radiation level on the scrap; and

(ii) Importer shall also furnish copy of the contract with the exporter stipulating that the consignment does not contain any radioactive contaminated material in any form.

(c) xxxxxx

(d) Import of un-shredded compressed and loose form of metallic waste, scrap listed in paragraph 2.51(a) above in shall be subject to the following conditions:

(i) At the time of the clearance of goods, importer shall furnish to the Customs pre-shipment inspection certificate as per the format in Appendix 2H from any of the Inspection& Certification agencies given in Appendix-2G to the effect that the consignment does not contain any type of arms, ammunition, mines, shells, cartridges, or any other explosive material in any form either used or otherwise, and that the consignment was checked for radiation level and it does not contain radiation level (gamma and neutron) in excess of natural background. The certificate shall give the value of background radiation level at that place as also the maximum radiation level on the scrap.

(ii) The imported item (s) is actually a metallic waste/ scrap /seconds /defective as per the internationally accepted parameters for such a classification.

(iii) Copy of the contract between the importer and the exporter stipulating that the consignment does not contain any type of arms, ammunition, mines, shells, cartridges, radioactive contaminated, or any other explosive material in any form either used or otherwise.

(iv) xxxxxxxxxx

(v) Only entry sea ports will be designated and notified for import of un-shredded Metallic Waste and Scrap subject to the following:

(i) Xxxxx
(ii) Xxxxxx
(iii) Xxxxx

(iv) Import consignments of metallic waste and scrap shall be subject to pre-shipment inspection certificate (PSIC) from the country of origin. However, metallic waste and scrap (both shredded and unshredded) imported from safe countries / region i.e., the USA, the UK, Canada, New Zealand, Australia and the EU will not require PSIC if consignments are cleared through eight (8) ports namely, Chennai, Tuticorin, Kandla, JNPT, Mumbai Krishnapatnam, Mundra and Kattupalli. Consignments from these six countries / regions will be accompanied by certificate from the supplier / scrap yard authority to the effect that it does not contain any radioactive materials / explosives. These will however be subject to radiation and explosive checks through portal monitors and container scanner at these ports. Trans-shipments through these countries / regions will not be allowed this facility. Import through remaining eight (8) other ports (for both shredded and unshredded scrap / waste), irrespective of country of origin, will be subject to PSIC.

2.52 Recognition as Pre-shipment Inspection Agency (PSIA) and issuance of Pre-shipment Certificate (PSIC)

2.53 Responsibility and Liability of PSIA and Importer

(a) In case of any mis-declaration in PSIC or mis-declaration in the online application form for recognition as PSIA, the PSIA would be liable for penal action under Foreign Trade (Development & Regulation) Act, 1992, as amended, in addition to suspension/ cancellation of recognition.

(b) The importer and exporter would be jointly and severally responsible for ensuring that the material imported is in accordance with the declaration given in PSIC. In case of any mis-declaration, they shall be liable for penal action under Foreign Trade (Development & Regulation) Act, 1992, as amended.

13. A harmonious reading of the above provisions clarifies that as per Para 2.32 of the Foreign Trade Policy, the scrap can be imported in any form whether as a **shredded scrap or as un-shredded scrap**, so long as no contamination / toxicity or radio active material is found. It is further provided that the conditions given under Para 2.51 of the Handbook of Procedures are required to be followed.

14. As per Para 2.51 of the Handbook of Procedures:

- Para (a) gives the list of types of scrap that can be imported.
- Para (b) speaks of Shredded scrap.
- Para (d) deals with un-shredded, compressed, loose scrap.
- Para (d) (i) specifies that at the time of the clearance of goods, importer shall furnish to the Customs pre-shipment inspection certificate as per the format in

Appendix 2H from any of the Inspection& Certification agencies given in Appendix-2G.

- Para (d) (ii) species that the imported item (s) is actually a metallic waste/ scrap /seconds /defective as per the internationally accepted parameters for such a classification.

- Para (d) (iv) specifies that the Import consignments of metallic waste and scrap shall be subject to pre-shipment inspection certificate (PSIC) from the country of origin.

- Para 2.52 gives the procedure for Recognition as Pre-shipment Inspection Agency (PSIA) and issuance of Pre-shipment Certificate (PSIC)

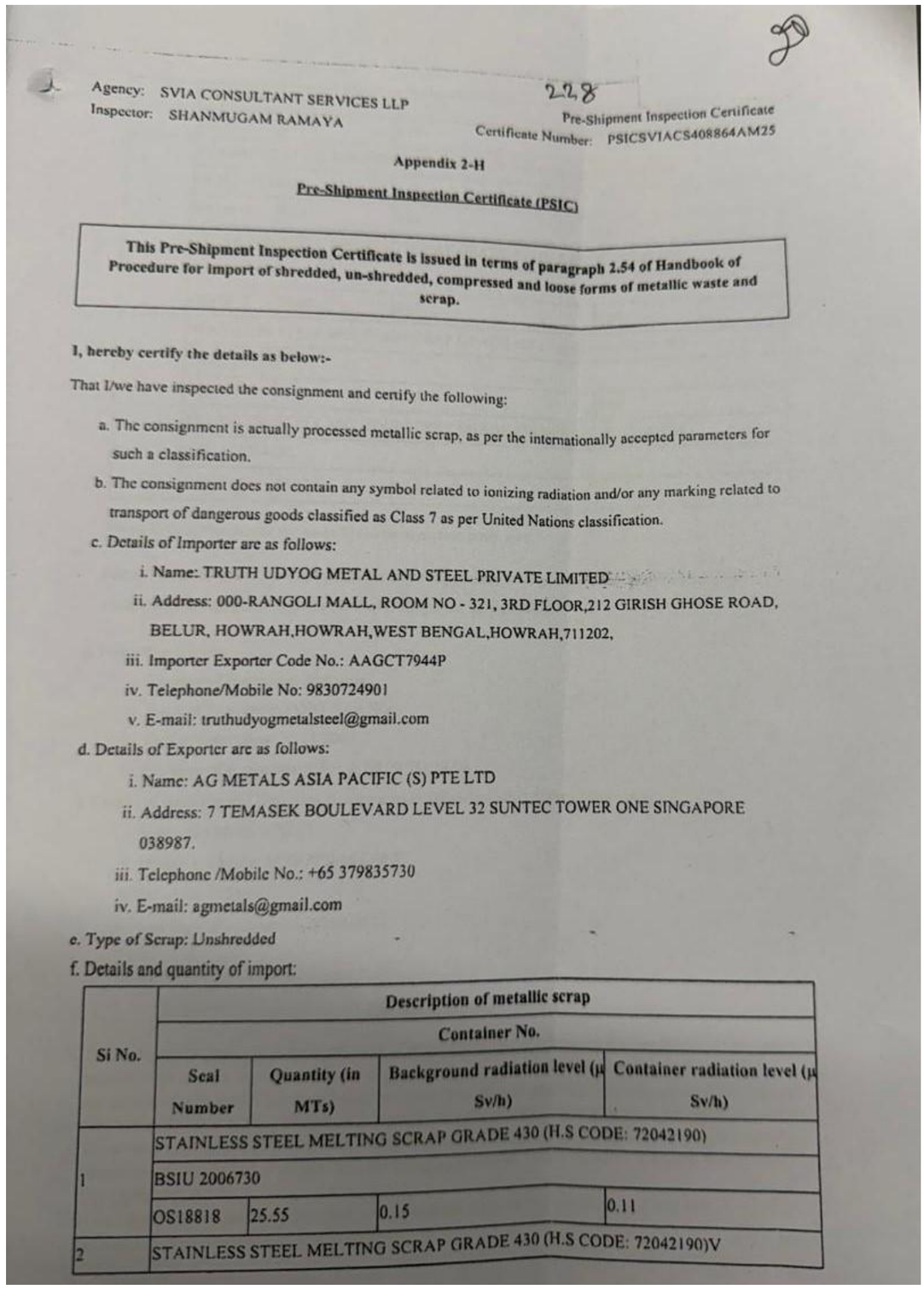
- Para 2.53 provides the details of Responsibility and Liability of PSIA and Importer

  (a) In case of any mis-declaration in PSIC or mis-declaration in the online application form for recognition as PSIA, the PSIA would be liable for penal action under Foreign Trade (Development & Regulation) Act, 1992, as amended, in addition to suspension/ cancellation of recognition.

  (b) The importer and exporter would be jointly and severally responsible for ensuring that the material imported is in accordance with the declaration given in PSIC. In case of any mis-declaration, they shall be liable for penal action under Foreign Trade (Development & Regulation) Act, 1992, as amended.

15. In the present case, the goods in question are un-shredded scrap. There is no dispute that the appellant has provided the Pre-Inspection Certificate from the PSIA. There is no dispute in the SCN that the Certificate issuing Agency is not a designated agency.

16. We are reproducing the Certificate issued by the PSIA for 1st, 2nd Consignments:



Agency: SVIA CONSULTANT SERVICES LLP
Inspector: SHANMUGAM RAMAYA

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Pre-Shipment Inspection Certificate
Certificate Number: PSICSVIACS408864AM25

Appendix 2-H

Pre-Shipment Inspection Certificate (PSIC)

This Pre-Shipment Inspection Certificate is issued in terms of paragraph 2.54 of Handbook of Procedure for import of shredded, un-shredded, compressed and loose forms of metallic waste and scrap.

I, hereby certify the details as below:-

That I/we have inspected the consignment and certify the following:

a. The consignment is actually processed metallic scrap, as per the internationally accepted parameters for such a classification.

b. The consignment does not contain any symbol related to ionizing radiation and/or any marking related to transport of dangerous goods classified as Class 7 as per United Nations classification.

c. Details of Importer are as follows:

i. Name: TRUTH UDYOG METAL AND STEEL PRIVATE LIMITED

ii. Address: 000-RANGOLI MALL, ROOM NO - 321, 3RD FLOOR,212 GIRISH GHOSE ROAD, BELUR, HOWRAH,HOWRAH,WEST BENGAL,HOWRAH,711202,

iii. Importer Exporter Code No.: AAGCT7944P

iv. Telephone/Mobile No: 9830724901

v. E-mail: truthudyogmetalsteel@gmail.com

d. Details of Exporter are as follows:

i. Name: AG METALS ASIA PACIFIC (S) PTE LTD

ii. Address: 7 TEMASEK BOULEVARD LEVEL 32 SUNTEC TOWER ONE SINGAPORE 038987.

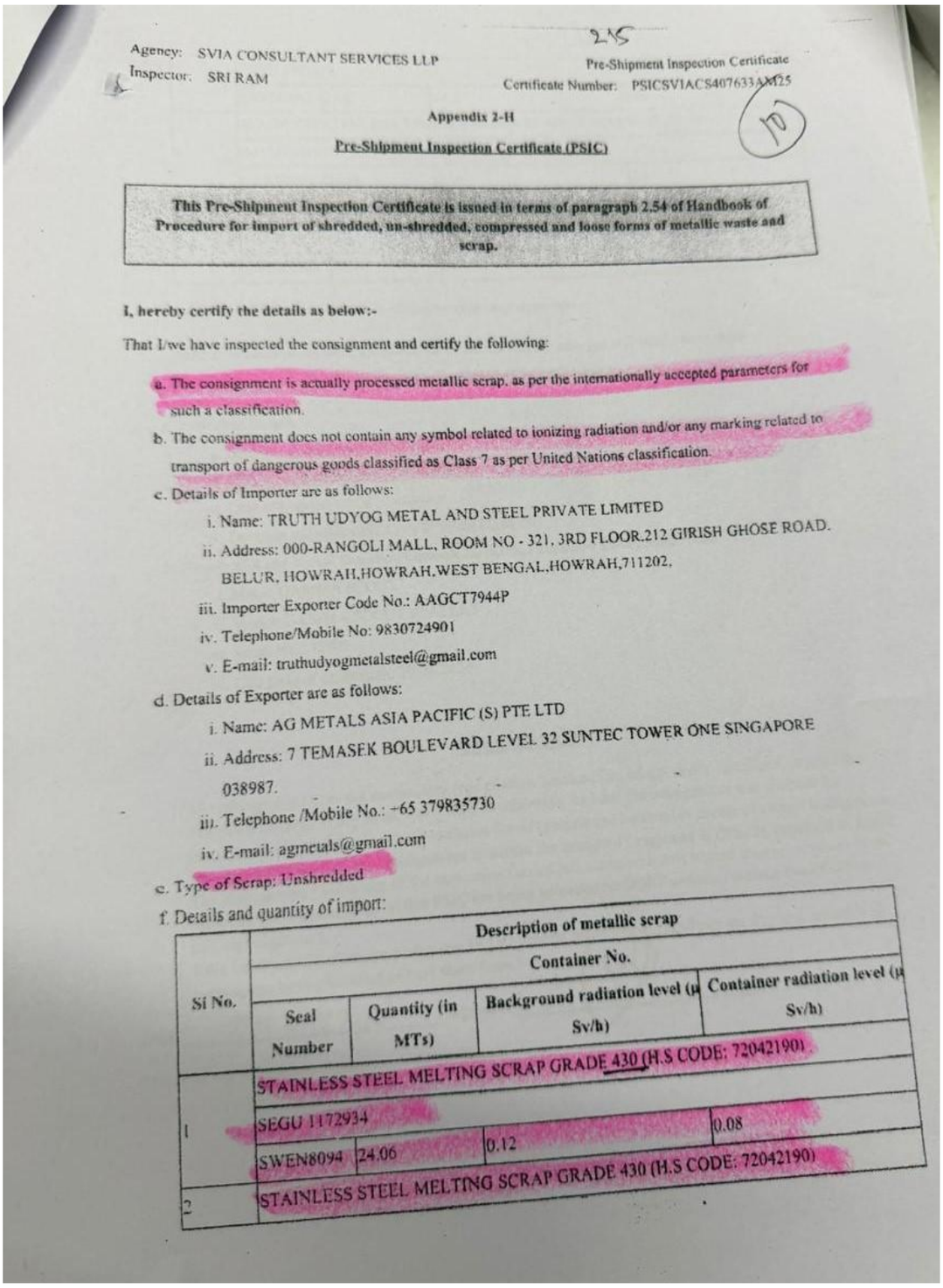
iii. Telephone /Mobile No.: +65 379835730

iv. E-mail: agmetals@gmail.com

e. Type of Scrap: Unshredded

f. Details and quantity of import:

Sl No.	Description of metallic scrap			
	Container No.			
	Seal Number	Quantity (in MTs)	Background radiation level (µ Sv/h)	Container radiation level (µ Sv/h)
1	STAINLESS STEEL MELTING SCRAP GRADE 430 (H.S CODE: 72042190)			
	BSIU 2006730			
	OS18818	25.55	0.15	0.11
2	STAINLESS STEEL MELTING SCRAP GRADE 430 (H.S CODE: 72042190)V			



Agency: SVIA CONSULTANT SERVICES LLP
Inspector: SRI RAM

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Pre-Shipment Inspection Certificate
Certificate Number: PSICSVIACS407633AM25

Appendix 2-H

Pre-Shipment Inspection Certificate (PSIC)

This Pre-Shipment Inspection Certificate is issued in terms of paragraph 2.54 of Handbook of Procedure for import of shredded, un-shredded, compressed and loose forms of metallic waste and scrap.

I, hereby certify the details as below:-

That I/we have inspected the consignment and certify the following:

a. The consignment is actually processed metallic scrap, as per the internationally accepted parameters for such a classification.

b. The consignment does not contain any symbol related to ionizing radiation and/or any marking related to transport of dangerous goods classified as Class 7 as per United Nations classification.

c. Details of Importer are as follows:

i. Name: TRUTH UDYOG METAL AND STEEL PRIVATE LIMITED

ii. Address: 000-RANGOLI MALL, ROOM NO - 321, 3RD FLOOR.212 GIRISH GHOSE ROAD. BELUR, HOWRAH,HOWRAH,WEST BENGAL,HOWRAH,711202,

iii. Importer Exporter Code No.: AAGCT7944P

iv. Telephone/Mobile No: 9830724901

v. E-mail: truthudyogmetalsteel@gmail.com

d. Details of Exporter are as follows:

i. Name: AG METALS ASIA PACIFIC (S) PTE LTD

ii. Address: 7 TEMASEK BOULEVARD LEVEL 32 SUNTEC TOWER ONE SINGAPORE 038987.

iii. Telephone /Mobile No.: +65 379835730

iv. E-mail: agmetals@gmail.com

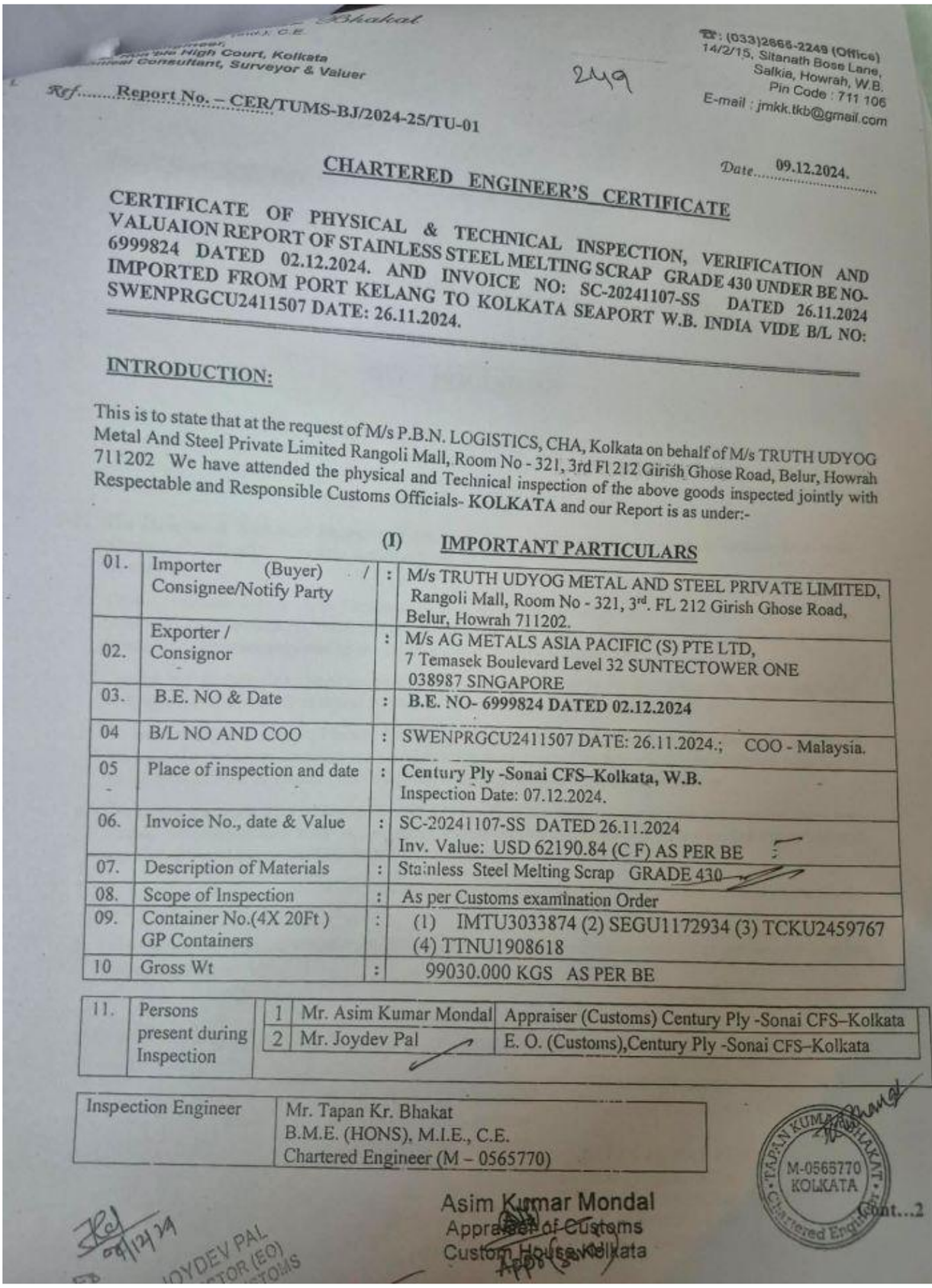
e. Type of Scrap: Unshredded

f. Details and quantity of import:

Sl No.	Description of metallic scrap			
	Container No.			
	Seal Number	Quantity (in MTs)	Background radiation level (μ Sv/h)	Container radiation level (μ Sv/h)
1	STAINLESS STEEL MELTING SCRAP GRADE 430 (H.S CODE: 72042190)			
	SEGU 1172934			0.08
	SWEN8094	24.06	0.12	
2	STAINLESS STEEL MELTING SCRAP GRADE 430 (H.S CODE: 72042190)			

17. From the above Certificates, it is seen that the PSIA as filled up all the requisite columns and has classified the goods as scrap only.

18. The Chartered Engineer's Certificate dated 9.12.2024 for the first consignment is reproduced below:



Bhakat

...C.E.
...e High Court, Kolkata
...ical Consultant, Surveyor & Valuer

☎: (033)2666-2249 (Office)
14/2/15, Sitanath Bose Lane,
Salkia, Howrah, W.B.
Pin Code : 711 106
E-mail : jmkk.tkb@gmail.com

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Ref.....Report No. – CER/TUMS-BJ/2024-25/TU-01

Date.....09.12.2024.

CHARTERED ENGINEER'S CERTIFICATE

CERTIFICATE OF PHYSICAL & TECHNICAL INSPECTION, VERIFICATION AND VALUAION REPORT OF STAINLESS STEEL MELTING SCRAP GRADE 430 UNDER BE NO-6999824 DATED 02.12.2024. AND INVOICE NO: SC-20241107-SS DATED 26.11.2024 IMPORTED FROM PORT KELANG TO KOLKATA SEAPORT W.B. INDIA VIDE B/L NO: SWENPRGCU2411507 DATE: 26.11.2024.

INTRODUCTION:

This is to state that at the request of M/s P.B.N. LOGISTICS, CHA, Kolkata on behalf of M/s TRUTH UDYOG Metal And Steel Private Limited Rangoli Mall, Room No - 321, 3rd Fl 212 Girish Ghose Road, Belur, Howrah 711202 We have attended the physical and Technical inspection of the above goods inspected jointly with Respectable and Responsible Customs Officials- **KOLKATA** and our Report is as under:-

(I) IMPORTANT PARTICULARS

01.	Importer (Buyer) / Consignee/Notify Party	:	M/s TRUTH UDYOG METAL AND STEEL PRIVATE LIMITED, Rangoli Mall, Room No - 321, 3rd. FL 212 Girish Ghose Road, Belur, Howrah 711202.
02.	Exporter / Consignor	:	M/s AG METALS ASIA PACIFIC (S) PTE LTD, 7 Temasek Boulevard Level 32 SUNTECTOWER ONE 038987 SINGAPORE
03.	B.E. NO & Date	:	**B.E. NO- 6999824 DATED 02.12.2024**
04	B/L NO AND COO	:	SWENPRGCU2411507 DATE: 26.11.2024.; COO - Malaysia.
05	Place of inspection and date	:	**Century Ply -Sonai CFS–Kolkata, W.B.** Inspection Date: 07.12.2024.
06.	Invoice No., date & Value	:	SC-20241107-SS DATED 26.11.2024 Inv. Value: USD 62190.84 (C F) AS PER BE
07.	Description of Materials	:	Stainless Steel Melting Scrap GRADE 430
08.	Scope of Inspection	:	As per Customs examination Order
09.	Container No.(4X 20Ft) GP Containers	:	(1) IMTU3033874 (2) SEGU1172934 (3) TCKU2459767 (4) TTNU1908618
10	Gross Wt	:	99030.000 KGS AS PER BE

11.	Persons present during Inspection	1	Mr. Asim Kumar Mondal	Appraiser (Customs) Century Ply -Sonai CFS–Kolkata
		2	Mr. Joydev Pal	E. O. (Customs),Century Ply -Sonai CFS–Kolkata

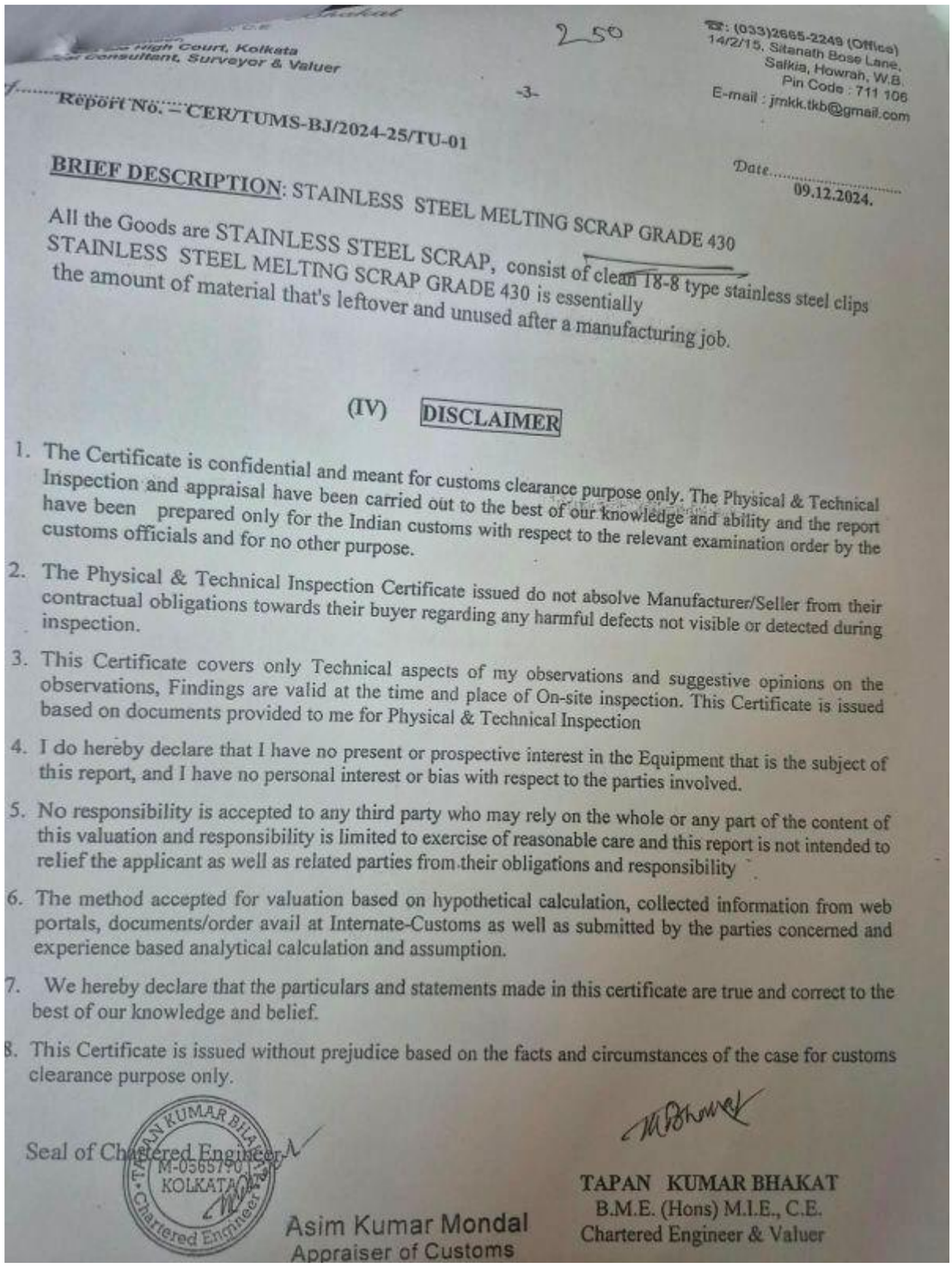
Inspection Engineer	Mr. Tapan Kr. Bhakat B.M.E. (HONS), M.I.E., C.E. Chartered Engineer (M – 0565770)

TAPAN KUMAR BHAKAT M-0565770 KOLKATA Chartered Engineer

Asim Kumar Mondal
Appraiser of Customs
Custom House, Kolkata

9/12/24
JOYDEV PAL
...TOR (EO)
...TOMS

Cont...2



...High Court, Kolkata
...Consultant, Surveyor & Valuer

2-50

-3-

☎: (033)2665-2249 (Office)
14/2/15, Sitanath Bose Lane,
Salkia, Howrah, W.B.
Pin Code : 711 106
E-mail : jmkk.tkb@gmail.com

Report No. :- CER/TUMS-BJ/2024-25/TU-01

Date..... 09.12.2024.

BRIEF DESCRIPTION: STAINLESS STEEL MELTING SCRAP GRADE 430

All the Goods are STAINLESS STEEL SCRAP, consist of clean 18-8 type stainless steel clips STAINLESS STEEL MELTING SCRAP GRADE 430 is essentially the amount of material that's leftover and unused after a manufacturing job.

(IV) **DISCLAIMER**

1. The Certificate is confidential and meant for customs clearance purpose only. The Physical & Technical Inspection and appraisal have been carried out to the best of our knowledge and ability and the report have been prepared only for the Indian customs with respect to the relevant examination order by the customs officials and for no other purpose.
2. The Physical & Technical Inspection Certificate issued do not absolve Manufacturer/Seller from their contractual obligations towards their buyer regarding any harmful defects not visible or detected during inspection.
3. This Certificate covers only Technical aspects of my observations and suggestive opinions on the observations, Findings are valid at the time and place of On-site inspection. This Certificate is issued based on documents provided to me for Physical & Technical Inspection
4. I do hereby declare that I have no present or prospective interest in the Equipment that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.
5. No responsibility is accepted to any third party who may rely on the whole or any part of the content of this valuation and responsibility is limited to exercise of reasonable care and this report is not intended to relief the applicant as well as related parties from their obligations and responsibility
6. The method accepted for valuation based on hypothetical calculation, collected information from web portals, documents/order avail at Internate-Customs as well as submitted by the parties concerned and experience based analytical calculation and assumption.
7. We hereby declare that the particulars and statements made in this certificate are true and correct to the best of our knowledge and belief.
8. This Certificate is issued without prejudice based on the facts and circumstances of the case for customs clearance purpose only.

Seal of Chartered Engineer

TAPAN KUMAR BHAKAT
M-0565790
KOLKATA
Chartered Engineer

Asim Kumar Mondal
Appraiser of Customs

TAPAN KUMAR BHAKAT
B.M.E. (Hons) M.I.E., C.E.
Chartered Engineer & Valuer

19. This examination has been conducted by the Chartered Engineer in the presence of the Customs officials, who have also signed the Certificate, which states that the goods in question are '*Stainless Steel*

Scrap Grade 430' and *'is essentially the amount of material that's leftover and unused after a manufacturing job'.*

20. We find that this Certificate has been accepted and the goods have been allowed to be cleared without any further Chemical Examination being conducted. There is also nothing coming up from the proceedings that even subsequently any Chemical Examination was conducted in respect of the samples collected in respect of this consignment. Therefore, in the case of the first consignment of 99090 kgs, no corroborative evidence by way of any plausible Test / Lab Report has been brought in by the Revenue to canvass their case that the goods in question is not 'scrap' but the same is 'prime material'.

21. The Revenue has recorded the statements by the buyers of this consignment, the appellants and others to fortify their claim. But we find that these statements on their own do not prove that goods are 'prime in nature'. The appellant while replying to the SCN has literally retracted from the earlier statement given by him. In the absence of the recorded statements being subjected to Section 138B proceedings, on their own recorded statements cannot be relied upon as proper evidence as has been held in catena of judgements. We have for reference the decision of **G-Tech Industries Vs. Union of India-2016 (339) E.L.T. 209 (P&H)**, wherein the High Court, analyzing the procedure under Section 9D of the CEA 1944 [Para materia to Section 138B of Customs Act 1962], has held as under:

> ***7.*** *There can, therefore, be no doubt about the legal position that the procedure prescribed in sub-section (1) of Section 9D is required to be scrupulously followed, as much in adjudication proceedings as in criminal proceedings relating to prosecution.*
>
> ***8.*** *As already noticed herein above, sub-section (1) of Section 9D sets out the circumstances in which a statement, made and signed before a Gazetted Central Excise Officer, shall be relevant for the purpose of proving the truth of the facts*

> *contained therein. If these circumstances are absent, the statement, which has been made during inquiry/investigation, before a Gazetted Central Excise Officer, cannot be treated as relevant for the purpose of proving the facts contained therein. In other words, in the absence of the circumstances specified in Section 9D(1), the truth of the facts contained in any statement, recorded before a Gazetted Central Excise Officer, has to be proved by evidence other than the statement itself. The evidentiary value of the statement, insofar as proving the truth of the contents thereof is concerned, is, therefore, completely lost, unless and until the case falls within the parameters of Section 9D(1).*

22. In the present case, admittedly Section 138B procedure was not followed. Therefore, what is presented before us are mere statements, some of which were rebutted at the time of reply to SCN. No other corroborative evidence towards Chemical examination of the consignment, have been brought in. We hold that the recorded statements alone, without their being subjected to Section 138B procedure, cannot come to the rescue of the Revenue.

23. Even in the recorded statements, we find that no query has been made with the buyers about the value at which the goods were sold to them. As per the Revenue, the value of the imported goods [Prime as per Revenue] would be almost 215% of the declared imported value. That means the appellant should have sold the imported goods @ Rs.129 plus to the buyers, if it were to be Prime material. No verification has been taken up to ask if any cash transaction has taken place for the higher amount to be paid to the appellant. We find that no investigation has been taken up on this aspect at all. Therefore, in the absence of any evidence brought in by the Revenue, it has to be only concluded that the appellant has sold the goods as scarp, which has been imported as scrap.

24. We find that in respect of the Second and Third Consignments, the Revenue has subjected them to Chartered Engineer's Certification

process as well as Chemical Engineer's Certificate. Irrespective of whether they prove the case of the Revenue or not, we have to first consider to whether the result in respect of the subsequent consignment can be relied on for fastening the liability in respect of the past consignment.

25. The Ahmedabad Bench in the case of **Stonex India Pvt Ltd Vs CC Mundra Kachh - 2025 (391) E.L.T. 652 (Tri. - Ahmd.)**, has gone into this aspect and after relying on several decisions has held as under:

> **5.7** Without prejudice to above, we find that demand of customs duty of past imports under Annexure B and C to SCN is also not sustainable on the ground that goods were not tested by department in respect of past imports in respect of which demand is made in Annexure-B and C to SCN. It is settled position of law that each Bill of entry is a separate assessment and test report of one bill of entry cannot be made applicable to the goods imported under another bill of entry. Each consignment must be assessed separately, especially for natural mined rocks, where properties vary significantly. Further, foreign suppliers analysis reports clearly provides dolomite as 92% to 99%. Further, goods from very same foreign suppliers were tested and found as dolomite by other customs laboratories and Geological survey of India, Nagpur. Reliance is placed upon decision in case of *Shalimar Paints Ltd.* v. *Commissioner* - 2001 (134) E.L.T. 285 (Tri. - Cal.) wherein HON'BLECESTAT held has under :
>
> > "7. The first grievance of the appellant is that though the classification lists in question covered about 30 products, test reports relatable to only 4 products are available and there is absolutely no material against the appellant in so far as the remaining 26 products are concerned. *He submits that presuming though denying that the test reports of CRCL are correct, the same can be made the basis for classifying only those products to which the test report relates. The same cannot be made applicable to the other items for which no samples were either drawn or if samples were drawn, there is no test report. For this proposition he relied upon the Tribunal's decision in the case of S.D. Kemexc Indus. v. CCE - 1995 (75) E.L.T. 377 (Tri. - Del.). In the said decision assessee was manufacturing 22 different types of chemicals. The Department drew samples only from two types of chemicals. It was held that test reports can be made applicable*

only for the two products for which the samples were drawn and not to the rest of the products. Following the ratio of the above decision we fully agree with the contention of the Ld. Adv. that the test reports, if at all could be made applicable only to the 4 items in question to which it belonged to. The balance 26 products would be classified under Heading 27.15 on the basis of the declarations made by the appellant which is based upon their technical literature as well as the production records and for which the Revenue has not adduced any evidence to shift the classification to heading 32.10."

Above decision was affirmed by Hon'ble Supreme court in case of [*Commissioner* v. *Shalimar Paints Ltd.* - 2002 (145) E.L.T. A242].

5.8 In case of *Commissioner of Customs (Preventive)* v. *Marks Marketing P. Ltd.* Reported as 2017 (346) E.L.T. 144 (Tri. - Del.) wherein Hon'ble CESTAT held as under :

"9. We find no merit in the above statement of the Revenue. Admittedly, the change in the classification of the present import of fabrics is based upon the test result by the chemical examiner whereas it is not disputed that no such test results were carried out in respect of previous imports. ***The law on the issue is well settled. The test reports of the samples drawn from a particular consignment cannot be applied to the previous consignments.*** Merely because the deponent of the statement has agreed before the Customs that the previous consignment may be of the same composition, by itself does not establish that the previous consignments were admittedly of the same composition. The expression used by the deponent is 'may be' and he himself was not sure of the same fact. The composition of the fabrics may vary or change from the consignment to consignment inasmuch as there is not much difference in the wool content of the fabrics. Revenue has not given us any reason as to why the ratio of Tribunal's decision in the case of *Shalimar Paints* (supra) which stands upheld by the Hon'ble Supreme Court, is not applicable to the facts of the present case. Apart from the decision of Shalimar Paints, we note that there are number of other precedent decisions holding to the same effect."

26. Coming to the absolute confiscation of the first consignment [which is part of the total confiscated goods of 399.55 MT] is concerned, it is on record that the consignment was neither seized nor was it available for confiscation at the time of passing of the OIO. In the case decided by the **Larger Bench in Shiv Kripa Ispat Pvt Ltd [2009 (235) ELT 623 (T-LB)],** it has been held as under:

> "9. We have given careful consideration to the submissions. As rightly pointed by the learned counsel, the Hon'ble High Court of Punjab & Haryana, in Raja Impex case (supra), has rendered decision on identical issue. One of the substantial questions of law placed before the High Court by the department was whether redemption fine under Section 125 of the Customs Act could be imposed where the goods were neither available for confiscation nor cleared under bond/undertaking. The Hon'ble High Court followed the ratio of the Apex Court's judgment in Weston Components case and held that, as the goods in question had been allowed to be cleared without execution of any bond/undertaking by the importer, no redemption fine could be imposed under Section 125 of the Customs Act in lieu of confiscation.
>
> 10. We have also particularly noted a decision of the Tribunal (cited by the learned advocate) which stands upheld by the Supreme Court. In Chinku Exports case, the Tribunal had held the redemption-fine-related issue against the Revenue in para (10) of its order, reproduced below :
>
> > *"10. In view of the aforesaid findings and analysis, we are of the considered opinion that none of these charges upheld in the order impugned are in fact sustained by our analysis. In this connection we are also surprised to find that the redemption fine of Rs. 2.89 lakhs has been imposed when the goods were not available for confiscation, the same having been exported many years ago. Neither was any bond with a security in any format available with the Department to be enforced. In view of this it is clear that the redemption fine imposed was totally outside the purview of legal provisions in this regard. Therefore, we set aside the order impugned and allow the appeal with consequential relief as per law." (emphasis supplied).*
> >
> > *Dismissing the department's Civil Appeal filed against the above order of the Tribunal, the Apex Court ordered vide 2005 (184) E.L.T. A36 (S.C.) as under: "We see no reason to interfere with the impugned order. The appeal is dismissed." (emphasis supplied)*

> In the result, the view taken by the Tribunal in Chinku Exports case stands affirmed by the Apex Court and consequently the similar view taken by the P & H High Court in Raja Impex case is a binding precedent while the contra decision of the Madras High Court in Venus Enterprises case ceases to be good law on the point. It may be noted contextually that the dismissal, by the apex Court, of the SLP filed by M/s. Venus Enterprises did not have the effect of enhancing the precedent value of the High Court's decision in that case."

27. We find that the ratio laid down in the above case is squarely applicable in the present case. Hence, we have no hesitation to apply the same.

28. In view of our above detailed discussions in respect the first consignment of 99030 kgs of stainless steel melting scrap, we hold that no case whatsoever has made against the appellant by the Revenue.

29. Accordingly, we set aside the redetermined value [@Rs.1,28,59,046], absolute confiscation under Section 111(d) and 111 (m), proportionate penalty under Section 112(a) of the Customs Act 1962, in respect of the final consignment of 99030 kgs. of stainless steel scrap.

30. Now we take up the issue in respect of the Second Consignment imported vide B/E No.7088851 dated 6th December 2024. In this case, as the consignment was 'live', the Revenue subjected the consignment to be examined by the Chartered Engineer, and also subjected to the Chemical Examination.

31. The Chartered Engineer's Certificate issued for the examination conducted by him. The same is reproduced below:

AIKAT KONAR
Chartered Engineer.
Reg No. M129095-3

Room Nos : 1/1 & 1/2 (1st Floor),
Phears Lane Commercial Complex
81/3/7 Phears Lane, Kolkata – 700 012
Ph.:2225-2023, 40077989, Fax: 40074753
Mob. : 9433147244, 9433759015
e-mail :saikatkonarkolkata@gmail.com

84.

ELBI/ 329/24-25

Dated : 06.01.2025

EXAMINATION REPORT

1. I, Saikat Konar, hereby certify that I have carried out visualexamination of the goods covered under invoice no. SC-20241107-SS dated 03.12.2024 issued by M/s. AG Metals Asia Pacific(S) Pte, Singapore in presence of D.R.I. and shed officials , Kolkata Customs, Govt of India along with the representative of M/s. PBN Logistics (CHA /Customs Broker)as per the details below: -

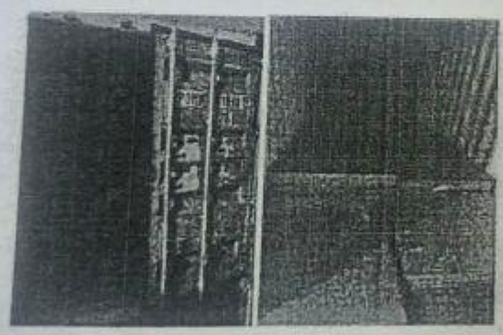
2. I have visually examined the goods and certify the following:

a) i) Place of Examination: Transworld CFS, Kolkata.
ii) Date of Examination : 03.01.2025.
iii) Duration of Examination (in hours) : 03 Hrs.

b) Details of Importer:-
(i) Name: Truth Udyog Metal and Steel Private Limited,
(ii) Address: Rangoli Mall, Room No.321, 3rd fl, 212, Girish Ghosh Road, Belur, Howrah 711202.
(iii)Importer Exporter Code No: AAGCT2944P.

3. BE No.& Date : 7088851 dt 06.12.2024

4. Photographs.



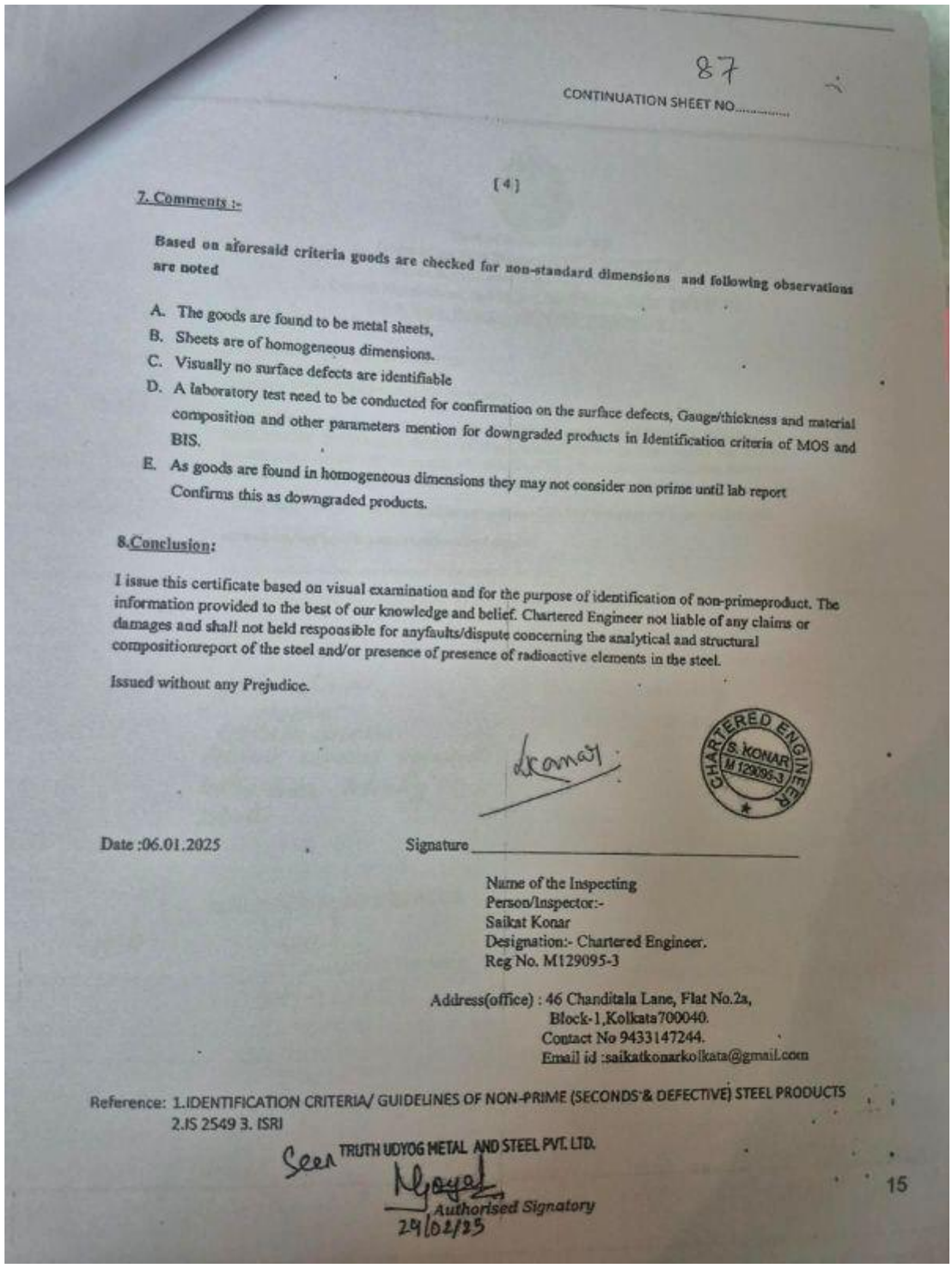


CHARTERED ENGINEER S. KONAR M 129095-3

Contd-p/2.

Industrial & project Management Consultants, Valuers, Surveyors, Examination& Quality Assurance Specialist, Energy & Safety Auditors

UDYOG METAL AND STEEL PVT. LTD.



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CONTINUATION SHEET NO.....

[4]

7. Comments :-

Based on aforesaid criteria goods are checked for non-standard dimensions and following observations are noted

A. The goods are found to be metal sheets,
B. Sheets are of homogeneous dimensions.
C. Visually no surface defects are identifiable
D. A laboratory test need to be conducted for confirmation on the surface defects, Gauge/thickness and material composition and other parameters mention for downgraded products in Identification criteria of MOS and BIS.
E. As goods are found in homogeneous dimensions they may not consider non prime until lab report Confirms this as downgraded products.

8.Conclusion:

I issue this certificate based on visual examination and for the purpose of identification of non-primeproduct. The information provided to the best of our knowledge and belief. Chartered Engineer not liable of any claims or damages and shall not held responsible for anyfaults/dispute concerning the analytical and structural compositionreport of the steel and/or presence of presence of radioactive elements in the steel.

Issued without any Prejudice.

CHARTERED ENGINEER S. KONAR M 129095-3

Date :06.01.2025 Signature _____

Name of the Inspecting
Person/Inspector:-
Saikat Konar
Designation:- Chartered Engineer.
Reg No. M129095-3

Address(office) : 46 Chanditala Lane, Flat No.2a,
Block-1,Kolkata700040.
Contact No 9433147244.
Email id :saikatkonarkolkata@gmail.com

Reference: 1.IDENTIFICATION CRITERIA/ GUIDELINES OF NON-PRIME (SECONDS & DEFECTIVE) STEEL PRODUCTS
2.IS 2549 3. ISRI

Seen TRUTH UDYOG METAL AND STEEL PVT. LTD.
Authorised Signatory
29/02/25

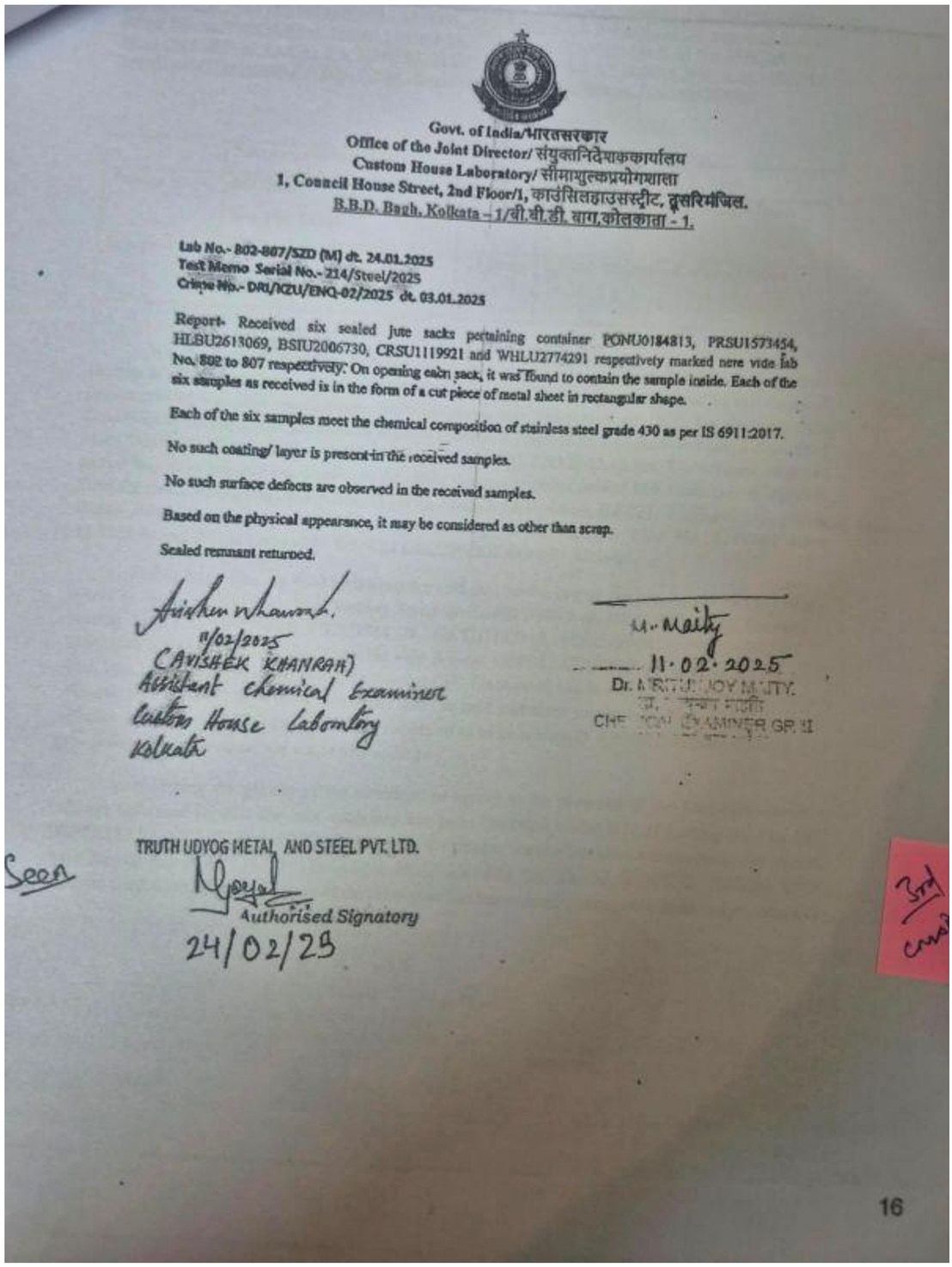
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32. It is seen from the Certificate [Emphasis supplied] dated 6.1.2025 that:

> C: *Visually no surface defects are identifiable*
>
> D: A *laboratory test need to be conducted* for confirmation on the *surface defects, Guage/thickness and material composition* and *other parameters mention for downgraded products* in identification criteria of MOS and BIS.
>
> E: As goods are found in homogenous dimensions, *they may not consider non-prime until lab confirms this as downgraded products.*
>
> Conclusion: I issue this certificate based on *visual examination*.

33. It is clear that the examination has been done 'visual examination' basis. The CE has emphasized that the Lab Test should be undertaken, since even the downgraded material would meet the criteria of Scrap.

34. After this, the Revenue has produced the Report dated 11.02.2025 issued by the Asst Chemical Engineer, Customs House Laboratory, which is reproduced below:



Govt. of India/भारतसरकार
Office of the Joint Director/ संयुक्तनिदेशककार्यालय
Custom House Laboratory/ सीमाशुल्कप्रयोगशाला
1, Council House Street, 2nd Floor/1, काउंसिलहाउसस्ट्रीट, दूसरीमंजिल.
B.B.D. Bagh, Kolkata – 1/बी.बी.डी. बाग,कोलकाता - 1.

Lab No.- 802-807/SZD (M) dt. 24.01.2025
Test Memo Serial No.- 214/Steel/2025
Cr.no. No.- DRI/ICZU/ENQ-02/2025 dt. 03.01.2025

Report- Received six sealed jute sacks pertaining container FONU0184813, PRSU1573454, HLBU2613069, BSIU2006730, CRSU1119921 and WHLU2774291 respectively marked here vide lab No. 802 to 807 respectively. On opening each sack, it was found to contain the sample inside. Each of the six samples as received is in the form of a cut piece of metal sheet in rectangular shape.

Each of the six samples meet the chemical composition of stainless steel grade 430 as per IS 6911:2017.

No such coating/ layer is present in the received samples.

No such surface defects are observed in the received samples.

Based on the physical appearance, it may be considered as other than scrap.

Sealed remnant returned.

Avishek Khanrah.
11/02/2025
(AVISHEK KHANRAH)
Assistant Chemical Examiner
Custom House Laboratory
Kolkata

M. Maity
11.02.2025
Dr. MRITUNJOY MAITY.
CHEMICAL EXAMINER GR. II

TRUTH UDYOG METAL AND STEEL PVT. LTD.
Authorised Signatory
24/02/25

Seen

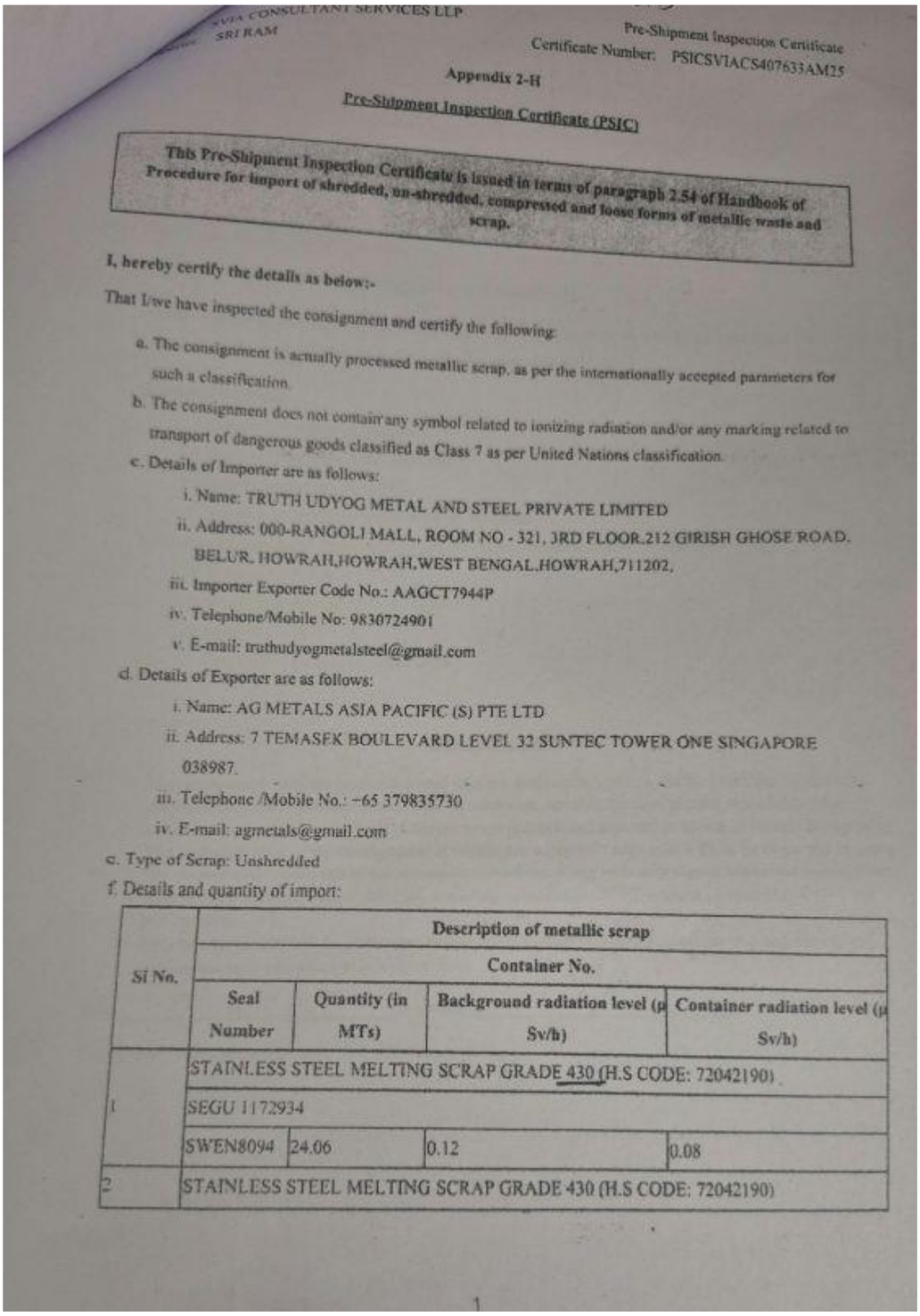
3rd

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35. This lab report also does not show the parameters considered for arriving at the conclusion that the goods in question are Prime material and not scrap. The Chartered Engineer had stated that the 'material

composition and other parameters mentioned for downgraded goods are required to be Lab tested. There is nothing to show as to what kind of test was conducted and as to on what basis the conclusion was arrived at. We find that conclusion arrived at by the Lab is abrupt without any proper documentary evidence back up.

36. We are extracting the Pre-Inspection Inspection Certificate issued by the Accredited agency in respect of the subject consignment:



...SULTANT SERVICES LLP
SRI RAM

Pre-Shipment Inspection Certificate
Certificate Number: PSICSVIACS407633AM25

Appendix 2-H

Pre-Shipment Inspection Certificate (PSIC)

This Pre-Shipment Inspection Certificate is issued in terms of paragraph 2.54 of Handbook of Procedure for import of shredded, un-shredded, compressed and loose forms of metallic waste and scrap.

I, hereby certify the details as below:-

That I/we have inspected the consignment and certify the following:

a. The consignment is actually processed metallic scrap, as per the internationally accepted parameters for such a classification.

b. The consignment does not contain any symbol related to ionizing radiation and/or any marking related to transport of dangerous goods classified as Class 7 as per United Nations classification.

c. Details of Importer are as follows:

i. Name: TRUTH UDYOG METAL AND STEEL PRIVATE LIMITED

ii. Address: 000-RANGOLI MALL, ROOM NO - 321, 3RD FLOOR,212 GIRISH GHOSE ROAD, BELUR, HOWRAH,HOWRAH,WEST BENGAL,HOWRAH,711202,

iii. Importer Exporter Code No.: AAGCT7944P

iv. Telephone/Mobile No: 9830724901

v. E-mail: truthudyogmetalsteel@gmail.com

d. Details of Exporter are as follows:

i. Name: AG METALS ASIA PACIFIC (S) PTE LTD

ii. Address: 7 TEMASEK BOULEVARD LEVEL 32 SUNTEC TOWER ONE SINGAPORE 038987.

iii. Telephone /Mobile No.: +65 379835730

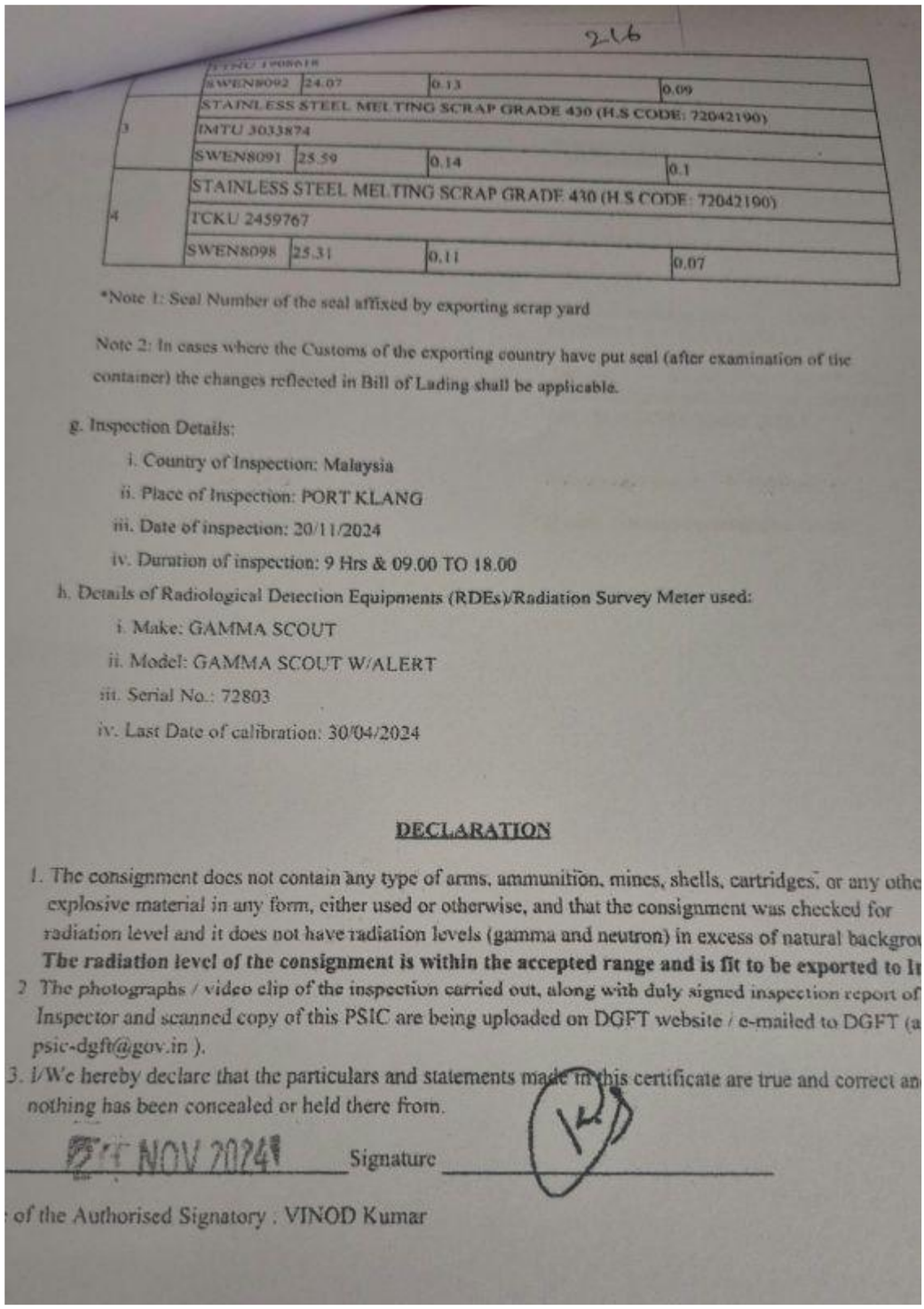
iv. E-mail: agmetals@gmail.com

e. Type of Scrap: Unshredded

f. Details and quantity of import:

Sl No.	Description of metallic scrap			
	Container No.			
	Seal Number	Quantity (in MTs)	Background radiation level (μ Sv/h)	Container radiation level (μ Sv/h)
1	STAINLESS STEEL MELTING SCRAP GRADE 430 (H.S CODE: 72042190)			
	SEGU 1172934			
	SWEN8094	24.06	0.12	0.08
2	STAINLESS STEEL MELTING SCRAP GRADE 430 (H.S CODE: 72042190)			

1



	SWEN8092	24.07	0.13	0.09
3	STAINLESS STEEL MELTING SCRAP GRADE 430 (H.S CODE: 72042190)			
	IMTU 3033874			
	SWEN8091	25.59	0.14	0.1
4	STAINLESS STEEL MELTING SCRAP GRADE 430 (H.S CODE: 72042190)			
	TCKU 2459767			
	SWEN8098	25.31	0.11	0.07

*Note 1: Seal Number of the seal affixed by exporting scrap yard

Note 2: In cases where the Customs of the exporting country have put seal (after examination of the container) the changes reflected in Bill of Lading shall be applicable.

g. Inspection Details:

i. Country of Inspection: Malaysia

ii. Place of Inspection: PORT KLANG

iii. Date of inspection: 20/11/2024

iv. Duration of inspection: 9 Hrs & 09.00 TO 18.00

h. Details of Radiological Detection Equipments (RDEs)/Radiation Survey Meter used:

i. Make: GAMMA SCOUT

ii. Model: GAMMA SCOUT W/ALERT

iii. Serial No.: 72803

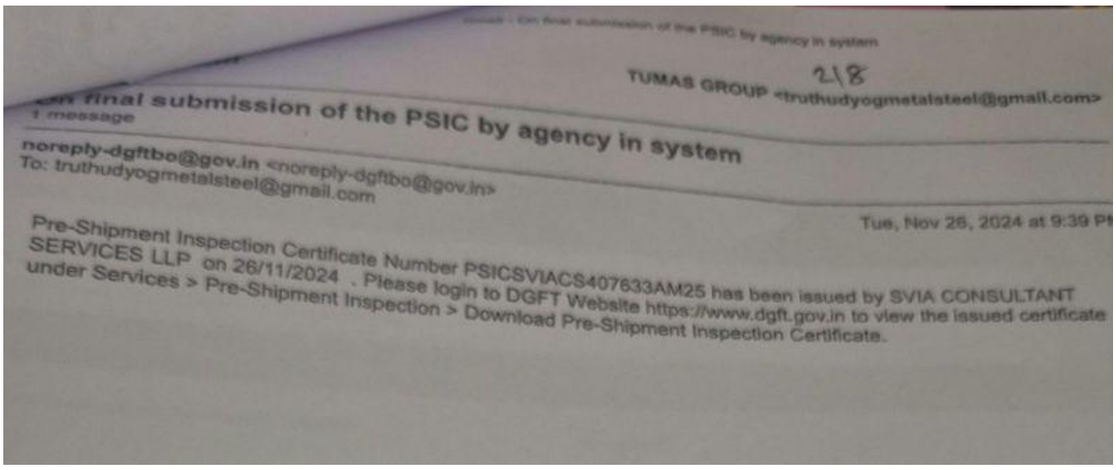
iv. Last Date of calibration: 30/04/2024

DECLARATION

1. The consignment does not contain any type of arms, ammunition, mines, shells, cartridges, or any othe explosive material in any form, either used or otherwise, and that the consignment was checked for radiation level and it does not have radiation levels (gamma and neutron) in excess of natural backgro **The radiation level of the consignment is within the accepted range and is fit to be exported to I**
2. The photographs / video clip of the inspection carried out, along with duly signed inspection report of Inspector and scanned copy of this PSIC are being uploaded on DGFT website / e-mailed to DGFT (a psic-dgft@gov.in).
3. I/We hereby declare that the particulars and statements made in this certificate are true and correct an nothing has been concealed or held there from.

NOV 2024 Signature

of the Authorised Signatory : VINOD Kumar



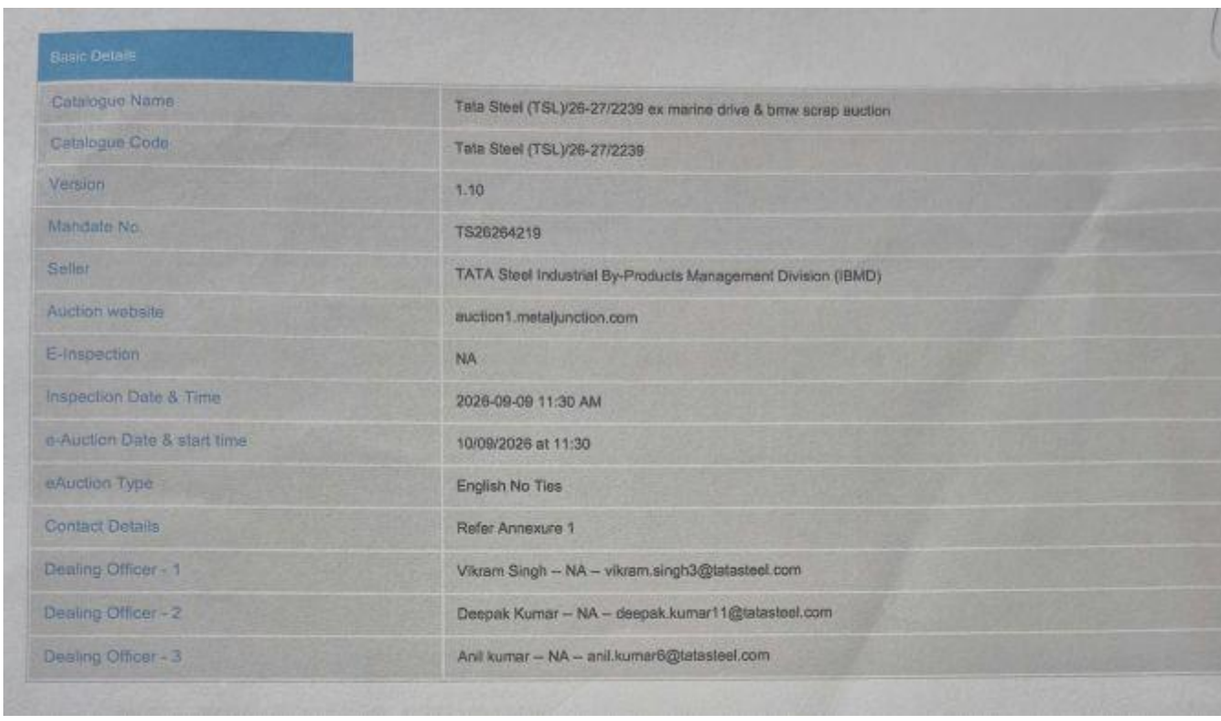
37. This Pre-Shipment Inspection Certificate states that the goods in question are stainless steel melting scrap grade 430. The Declaration also states that the photograph / video clip of the inspection carried out duly signed is to be scanned and to be made available to DGFT . The email shows that this has been done.

38. We find at that even as the Revenue has fallen short to prove that the goods under the second consignment are prime material based on the proper Chemical Lab Report, the appellant at the time of import has produced the Pre-shipment Certificate, issued by the accredited agency. There is nothing to show as to whether the video / photograph available in the website showing the inspection taken up has been verified by the Revenue after being duly uploaded by the certifying agency. This Certificate has not been rebutted or found to be false or fabricated by the Revenue, so far as we could see from the proceedings.

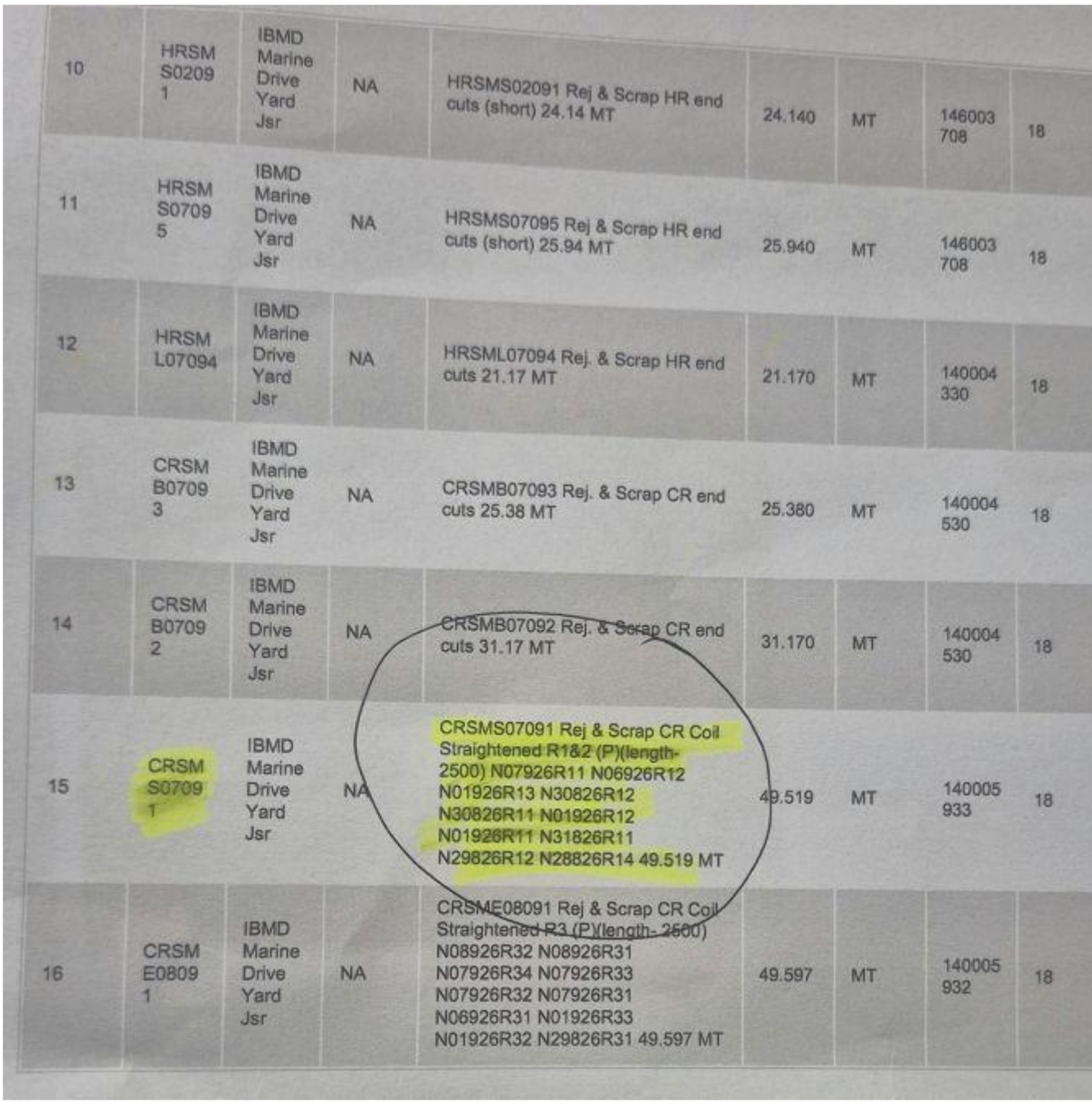
39. We have also observed that the Revenue has made emphasis about the fact the goods being in a properly stacked condition, with proper width and length, to take a view that they are Prime material. We have already gone through the FTP provisions [Para (d) of Para 2.51 of Hand Book of Procedures], which allows the scarp to be imported both as Shredded scrap or un-shredded scrap. For un-shredded scrap, there is no condition that the same should not be of uniform width and

length. The Revenue also fails to understand that any material which fails certain quality parameters and cannot be used as good material, requires to be sold as scarp only. This is the situation world over. Therefore, the basic assumption and illusion that the scrap should be that of cut pieces or shredded etc. to qualify as scrap is required to be discarded.

40. At the time of arguments, the Ld Senior Counsel has brought to our notice the Auction being undertaken for the Steel items by Tata Steel. He has enclosed the photographs and Auction notice. One sample picture of such Auction procedure is extracted below:



Basic Details	
Catalogue Name	Tata Steel (TSL)/26-27/2239 ex marine drive & bmw scrap auction
Catalogue Code	Tata Steel (TSL)/26-27/2239
Version	1.10
Mandate No.	TS26264219
Seller	TATA Steel Industrial By-Products Management Division (IBMD)
Auction website	auction1.metaljunction.com
E-Inspection	NA
Inspection Date & Time	2026-09-09 11:30 AM
e-Auction Date & start time	10/09/2026 at 11:30
eAuction Type	English No Ties
Contact Details	Refer Annexure 1
Dealing Officer - 1	Vikram Singh – NA – vikram.singh3@tatasteel.com
Dealing Officer - 2	Deepak Kumar – NA – deepak.kumar11@tatasteel.com
Dealing Officer - 3	Anil kumar – NA – anil.kumar6@tatasteel.com



10	HRSMS02091	IBMD Marine Drive Yard Jsr	NA	HRSMS02091 Rej & Scrap HR end cuts (short) 24.14 MT	24.140	MT	146003708	18
11	HRSMS07095	IBMD Marine Drive Yard Jsr	NA	HRSMS07095 Rej & Scrap HR end cuts (short) 25.94 MT	25.940	MT	146003708	18
12	HRSML07094	IBMD Marine Drive Yard Jsr	NA	HRSML07094 Rej. & Scrap HR end cuts 21.17 MT	21.170	MT	140004330	18
13	CRSMB07093	IBMD Marine Drive Yard Jsr	NA	CRSMB07093 Rej. & Scrap CR end cuts 25.38 MT	25.380	MT	140004530	18
14	CRSMB07092	IBMD Marine Drive Yard Jsr	NA	CRSMB07092 Rej. & Scrap CR end cuts 31.17 MT	31.170	MT	140004530	18
15	CRSMS07091	IBMD Marine Drive Yard Jsr	NA	CRSMS07091 Rej & Scrap CR Coil Straightened R1&2 (P)(length-2500) N07926R11 N06926R12 N01926R13 N30826R12 N30826R11 N01926R12 N01926R11 N31826R11 N29826R12 N28826R14 49.519 MT	49.519	MT	140005933	18
16	CRSME08091	IBMD Marine Drive Yard Jsr	NA	CRSME08091 Rej & Scrap CR Coil Straightened R3 (P)(length- 2500) N08926R32 N08926R31 N07926R34 N07926R33 N07926R32 N07926R31 N06926R31 N01926R33 N01926R32 N29826R31 49.597 MT	49.597	MT	140005932	18



41. When the photograph is viewed in the normal course, at the first glance, we may hold that they are Prime material. Only Tata Steel would be able to tell as to why the same is being sold as scrap. Therefore, just because the goods are stacked properly in an orderly

fashion with proper length and width, it would be wrong to come to a conclusion that the goods are 'Prime' without going into their quality and technical details. We feel this is the mistake is being committed by the Revenue in the present case.

42. As has been canvassed by the appellant, in order to import Prime Material, the condition imposed under the Steel Contral Order is that the standards set in by BIS have to be met. The Revenue claims that the goods are Prime material. Therefore, the onus is on the Revenue to the bring the proper lab report that the goods in question would meet the BIS/ SCO requirement for terming the goods as Prime material. We find force in the appellant's argument that once the goods do not meet BIS standards, the same can not be termed as Prime material nor can they be sold in the market as such. In the present case, the Revenue has termed the goods as Prime, without getting a lab test done to the effect that the parameters set in for Prime Material is met or not. As discussed above, both the Chartered Engineer's Certificate as well the Report given by the Asst Chemical Engineer, Customs House Laboratory do not show any evidence of proper chemical examination being undertaken as per the criteria laid down by BIS in respect of the Prime material. So far as the appellant is concerned, he has always maintained the imported goods are scrap and would not meet the BIS standards towards the Prime material.

43. Another aspect which requires our attention is the value paid by the appellant for the imported goods. Admittedly, the appellant has given the value @ Rs.60 per kg [USD 6.28 per kg]. This has been enhanced to Rs.129.85 by the Revenue. This would mean that the appellant has obtained goods of Rs.129 per kg @ Rs.60 per kg. The Revenue has not brought in any evidence to show as to how the overseas exporter could have sold the purported Prime material to the appellant at the cost of Scrap. Both the exporter and the importer claim that the goods are scrap. The the value adopted by them is that of

scrap as is shown in the Invoice. The payment for the second lot has been made through the Banking channels. As per the valuation adopted by the Revenue the balance about Rs.65 per kg. should have been remitted by the appellant by way of any other means. No corroborative evidence has been gathered to this effect.

44. In order to enhance the value of the imported materials, the Revenue has cited the **Customs Valuation (Determination of Value of Imported Goods) Amendment Rules, 2007**. They claim that they have followed Rules 4 to 9 sequentially to arrive at the Value. We are extracting some of the Rules relevant for this case:

> Rule 3. Determination of the method of valuation.- (1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10; (2) Value of imported goods under sub-rule (1) shall be accepted
>
> 12. Rejection of declared value. - (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

45. Rule 3 makes it clear that in the normal course, the Transaction value given in the Invoice is required to be taken as correct, unless any material is found about the relationship between the exporter and the importer. After this, the fact that the transaction value is being doubted is to be intimated to the importer and his response is to be called for. In

the present case, the valuation aspect has come up purely on the Revenue's premise that the goods in question are not 'scrap' but 'Prime material'. Even as we have discussed elaborately about the shortcomings of the investigation, verification etc. of the Revenue, we find that no effort has been made to find out as to how the higher value of the imported consignment reached the overseas exporter. It is seen that even in the recorded statements, no query has been put up on this issue to the officials of the importers to this effect.

46. We have also gone through some of the case laws on similar issues:

(2026) 45 Centax 19 (Tri.-Bom)
Al Udai Exim LLP
Vs Commissioner of Customs, Nagpur

On the back of import of 21 consignmemnts of 'end cut rejected CR strips in coil form of width less than 600 mm and thickness less than 1.2 mm' and one of the same description imported by M/s Al Udai Exim LLP between July 2023 and August 2023 and M/s Ramabors Exim LLP in July 2023 that was held to be 'stainless steel strips in coil form of different width' the goods were subjected to re-valuation and proceeded against for having been sought for clearance in breach of restrictions on import without BIS[1] certification.

3. The adjudicating authority re-valued the goods even as he intended to confiscate the goods under section 111(*d*), 111(*l*) and 111 (*m*) of Customs Act, 1962 without offering option to redeem under section 125 of Customs Act, 1962. From the circumscribing of penalties, envisaged for distinct alternatives and combinations thereof, in section 112 of Customs Act, 1962 and from section 111 (*l*) and section 111 (*m*) of Customs Act, 1962, there is no scope for goods to be dutiable and prohibited at the same time and, owing to mutual exclusivity, not amenable to confiscation under all three options forayed into in the impugned order. More so, as re-valuation of the goods has been resorted to by recourse to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 erected upon the presumption of nonsatisfaction through rule 12 thereof.

5. The customs authorities also sought intervention of a chartered engineer for determination of characteristic of the impugned goods and its value. The impugned order has been less than forthcoming on the contribution of chartered accountant to the proceedings and with neither the statute nor the relevant rules according such procedural intervention by a third person any sanctity. Even the attempt to seek refuge within the ambit of circular [Circular No. 4/2008-Customs dated 12th February 2008] of Central Board of Excise & Customs (CBEC) fails with the impugned goods not being capital goods.

8. He further submitted that the declaration was made in accordance with extant instructions of Ministry of Steel on the distinction between 'prime steel' and 'defective' and that the decision of the Tribunal [final order no. A/11470/2019 dated 5th August 2019 in customs appeal no. 13559 of 2014], in Suncity Strips & Tubes Pvt. Ltd. v. Commissioner of Customs, Ahmedabad [2019 (370) E.L.T. 1577 (Tri.-Ahmd)], had acknowledged so.

12. The first issue for consideration is the applicability of BIS certification to the impugned goods. Conventionally, only final products and articles that go into deployment in production for consumers were required to be so compliant. It is, however, clear from policy developments in the Ministry of Steel, Government of India that controls over imported steel products were being tightened. In addition to the issue of a comprehensive list in the Steel and Steel Products (Quality Control) Order, 2020, an online system of confirmation of exemption was made mandatory where such certification was not furnished with imported goods; apparently, all steel products do not merit BIS certification at the time of import. On perusal of the list in the two tables appended to the Order supra, we find absence of ITC(HS) 7220 2029. Even more significantly, the said description is not enumerated as input for pipes and tubes in Table 2 therein.

16. The impugned order, arrogating disposal of bills of entry under section 17(5) of Customs Act, 1962, does not survive for the above reasons. Penalties are set aside. The impugned goods have not been imported contrary to any prohibition under Customs Act, 1962 or any other law for the tome being in force. There is no change in rate of duty and the claim of goods being 'defective' has not been displaced. The value declared has not been established as not being 'transaction value' for assessment. Hence, the impugned order is set aside and the bills of

entry as self-assessed entitled to be presented for clearance under section 47 of Customs Act, 1962.

SAF Petroleums Vs ADG
Final Order No. A/86141-86142/2023
dated 17.07.2023

20. In any for a product to be considered as Diesel Oil, the same requires to fulfil all 21 parameters mentioned in IS 1460:2005. In the present case, the Custom House Laboratory vide aforesaid test reports have tested only 6 parameters. Hence, in other words, the Custom House Laboratory has not tested all the 21 parameters required in terms of IS 1460: 2005. We are of the view that without testing all the aforesaid parameters, the test reports cannot be considered to reclassify the imported goods as Diesel Oil. In this context, the Tribunal in the following cases have consistently taken a view that all the parameters stated under the Indian Standard needs to be tested for goods to be considered under that particular heading

22. In view of the above, the case of the department for the live consignment and for the past consignment should fail on the above ground itself, as the primary evidence in the form of test reports cannot be relied upon by the department as held in the preceding paragraphs. With respect to the goods imported by 51 bills of entry, the same in any event are well supported by independent test reports, which conclusively prove that the goods are Mineral Spirit. Neither have the department challenged the contents of the said Test Report nor have they provided any contrary test report to the one produced by the Appellant. In view thereof, the Appeals of the Appellants deserve to be allowed on the aforesaid ground alone. It is settled law that test report of live consignment cannot be used to reject the classification of past import. In this Context, Tribunal in the following cases have consistently held that test report of live bill of entry cannot be used to reject the classification of past import, which after due assessment by the proper officer have been cleared for home consumption.

27. Based on the aforesaid discussions, we hold that classification of goods imported under the 3 live bills of entry and 51 past Bills of Entry have been wrongly rejected.

> 28. Having held the above, the question of valuation will have to be allowed in favour of the Appellant as the same was disturbed by the department on the ground that goods imported were Diesel Oil and not Mineral Spirit.
>
> 29. In view of the above discussions and analysis, it is made clear that none of the evidences relied upon by the department, to allege the misclassification and under valuation resorted to by the appellants, stand the scrutiny of Law. We are of the considered opinion that the department failed to substantiate the allegations by cogent and legally admissible evidences. Hence, under the facts and in the circumstances of the case, we have no hesitation in allowing the appeals in favour of the appellants

47. As per the factual details discussed at length in the earlier paragraphs, the cited case laws would be applicable to the present appeals.

48. In view of the foregoing, we set aside the enhanced value of Rs.1,96,96,947, along with the order to confiscate the goods and to impose penalty under Section 112(a) in respect of the second consignment imported under B/E No.7088851 dated 6th December 2024.

49. Coming to the proceedings undertaken for the third consignment of under IGM2394511 for about 150 MT of steel scrap, we find that the appellant has not filed any Bill of Entry. They have relied on the case law to the effect that when no Bill of Entry is filed, the question of confiscating the goods or levying penalty would not arise. However, we find that the present case is distinguishable and hence the cited case law cannot be applied here.

50. We have gone through the factual details. Even in this case, the Revenue has got the consignment examined by the Chartered Engineer and the Report has been obtained from the Customs, which are reproduced below:

SAIKAT KONAR
Chartered Engineer,
Reg No. M129095-3

Room Nos.: 1/1 & 1/2 (1st Floor),
Phears Lane Commercial Complex
81/2/7 Phears Lane, Kolkata - 700 012
Ph: 2225-2023, 40077989, Fax: 40074753
Mob.: 9433147244, 9433759015
e-mail: saikatkonarkolkata@gmail.com

ELBI/ 419/24-25

Dated : 16.02.2025

EXAMINATION REPORT

1. I, Saikat Konar, hereby certify that I have carried out visual examination of the goods covered under B.L. no. OSPPKLCCU2500352 dated 07.12.2024 in presence of D.R.I. and shed officials , Kolkata Customs, Govt of India along with the representative of CHA /Customs Broker as per the details below: -

2. I have visually examined the goods and certify the following:

a) i) Place of Examination: Transworld CFS, Kolkata.
ii) Date of Examination : 14.02.2025.
iii) Duration of Examination (in hours) : 03 Hrs.

b) Details of Importer:-
(i) Name: Truth Udyog Metal and Steel Private Limited.
(ii) Address: Rangoli Mall, Room No.321, 3rd fl., 212, Girish Ghosh Road, Belur, Howrah 711202.
(iii)Importer Exporter Code No: AAGCT2944P.

3. I.G.M. No.& Date : 2394766 dt 11.12.2024

4. Photographs.





CHARTERED ENGINEER S. KONAR M 129095-3

contd-p/2

Annex-I

Products of Non-standard dimensions

A. **Hot - rolled wide Coil / Strips:** Flat rolled product in coils with a unit weight of less than four tonnes

B. **Hot-rolled sheet:** HR Sheet in mixed, non-homogeneous bundles of varying thickness, width and length.

C. **Cold rolled (coated, non-coated, electrical) Sheet/Strips/Coils:** *CR Sheets, including electrical sheet and all qualities of coated sheet (galvanized and electro-galvanized, aluminized, tin-plated, chrome-plated, pre-painted and lead-coated) in mixed non-homogeneous bundles with a unit weight of less than three tonnes, or in coils of less than three tonnes.*

D. **Heavy plate:** In mixed non-homogeneous bundles or stacks of varying thickness, width and length.

E. **Heavy Angles, Shapes & Section:** In ungraded lengths or lengths less than 6m.

F. **Merchant bar, including reinforcing bar:** In short, ungraded lengths:

   i. Less than 3 m for all products of solid section (rounds, square , hexagons, flats),

   ii. Less than 6 m for products of section less than 80 mm (U, T and other sections)

G. **Wire rod:** In Coils of fewer than 250 kg.

7. Comments :-

Based on aforesaid criteria goods are checked for non-standard dimensions and following observations are noted

A. The goods are found to be metal sheets being size 100 cm x 120 cm and thickness between (2.74 to 2.84)mm as per physical measurement,

B. Sheets are of homogeneous dimensions.

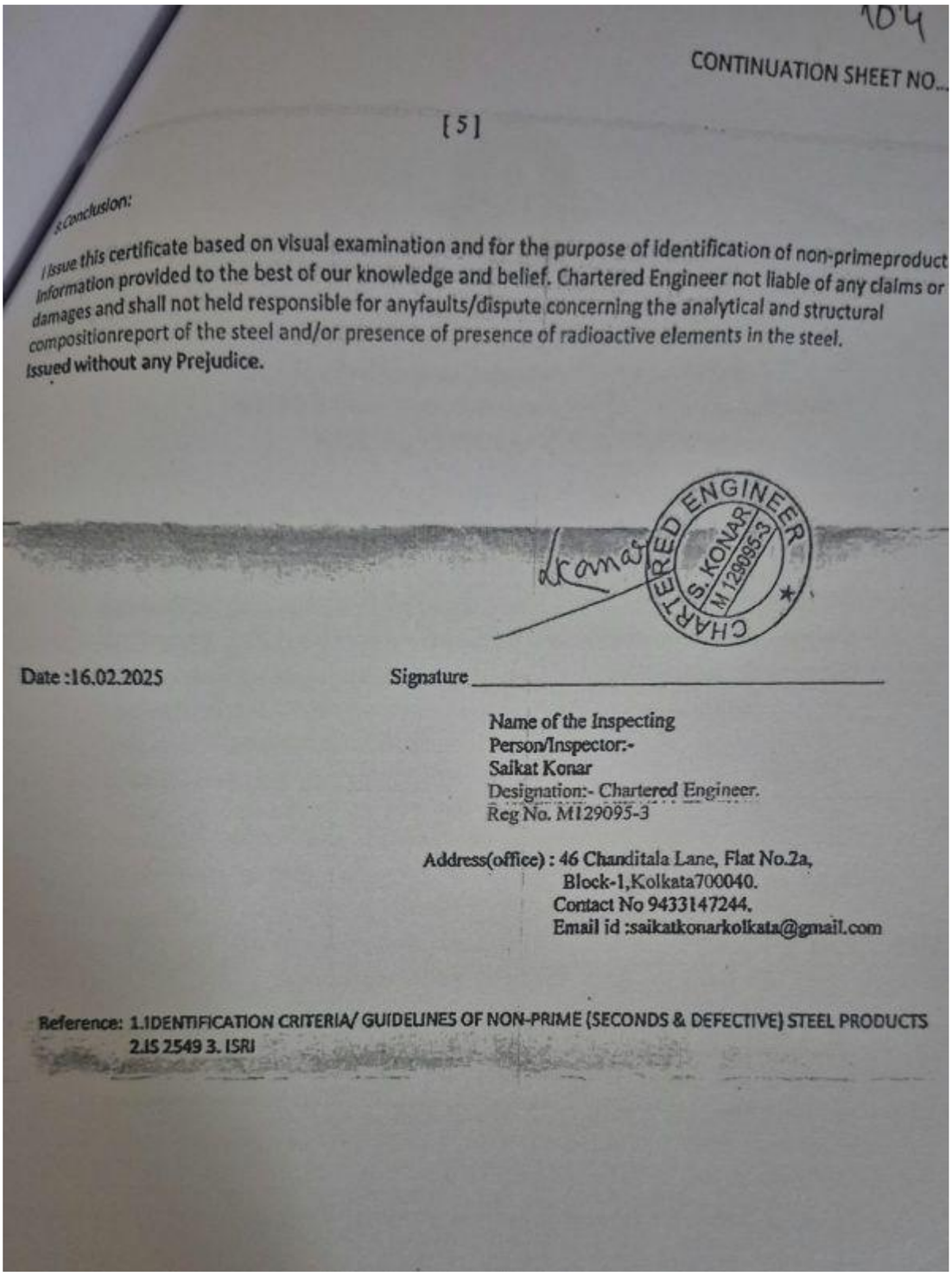
C. Visually no surface defects are identifiable

D. A laboratory test need to be conducted for confirmation on the surface defects, Gauge/thickness and material composition and other parameters mention for downgraded products in Identification criteria of MOS and BIS.

E. As goods are found in homogeneous dimensions they may not consider non prime until lab report Confirms this as downgraded products.

CHARTERED ENGINEER S. KONAR M 129095-3

Contd-p/5.



104

CONTINUATION SHEET NO...

[5]

5.Conclusion:

I issue this certificate based on visual examination and for the purpose of identification of non-primeproduct information provided to the best of our knowledge and belief. Chartered Engineer not liable of any claims or damages and shall not held responsible for anyfaults/dispute concerning the analytical and structural compositionreport of the steel and/or presence of presence of radioactive elements in the steel.
Issued without any Prejudice.

CHARTERED ENGINEER S. KONAR M 129095-3

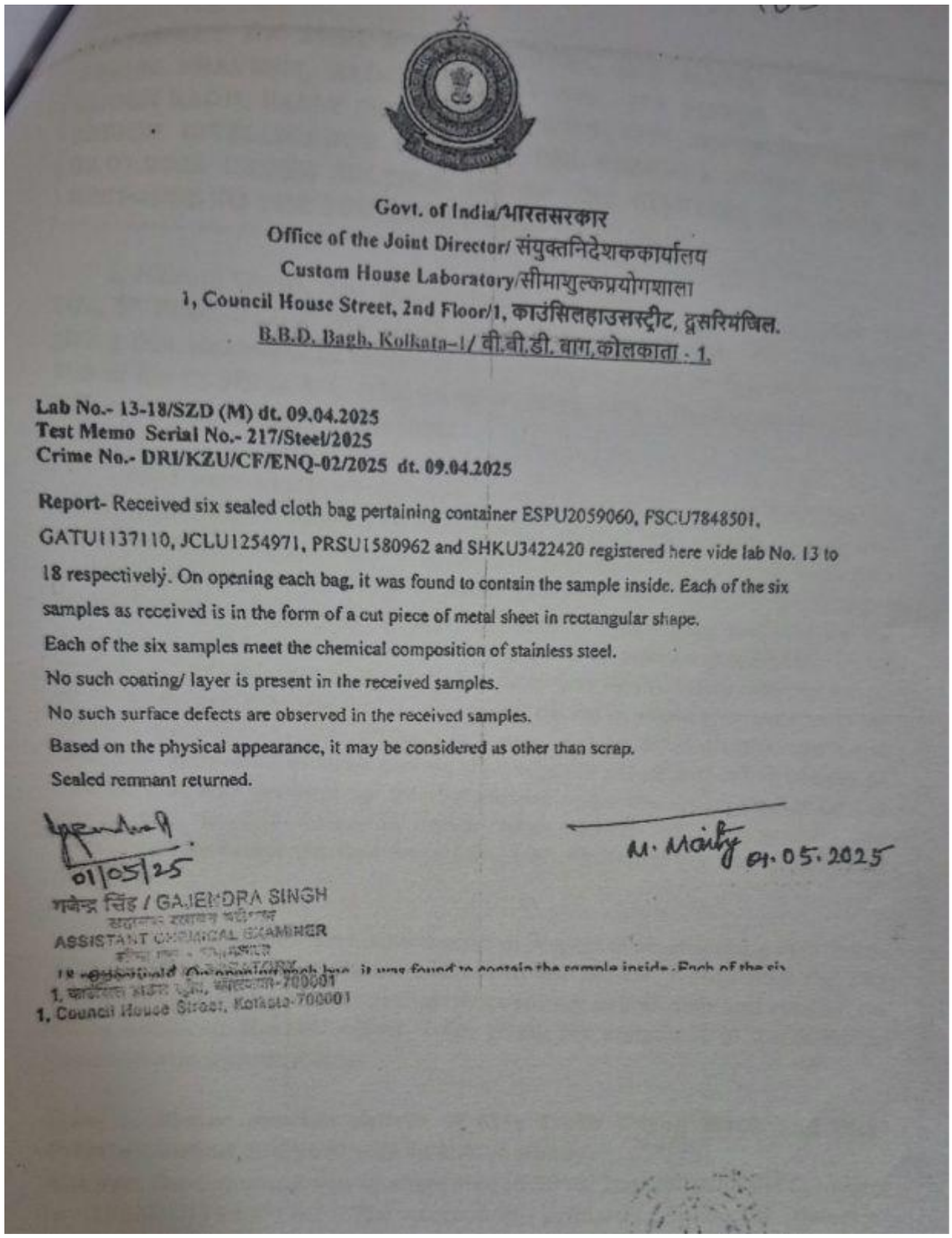
Date :16.02.2025

Signature _____

Name of the Inspecting
Person/Inspector:-
Saikat Konar
Designation:- Chartered Engineer.
Reg No. M129095-3

Address(office) : 46 Chanditala Lane, Flat No.2a,
Block-1,Kolkata700040.
Contact No 9433147244.
Email id :saikatkonarkolkata@gmail.com

Reference: 1.IDENTIFICATION CRITERIA/ GUIDELINES OF NON-PRIME (SECONDS & DEFECTIVE) STEEL PRODUCTS
2.IS 2549 3. ISRI



Govt. of India/भारतसरकार
Office of the Joint Director/ संयुक्तनिदेशककार्यालय
Custom House Laboratory/सीमाशुल्कप्रयोगशाला
1, Council House Street, 2nd Floor/1, काउंसिलहाउसस्ट्रीट, द्वसरिमंजिल.
B.B.D. Bagh, Kolkata-1/ बी.बी.डी. बाग,कोलकाता - 1.

Lab No.- 13-18/SZD (M) dt. 09.04.2025
Test Memo Serial No.- 217/Steel/2025
Crime No.- DRI/KZU/CF/ENQ-02/2025 dt. 09.04.2025

Report- Received six sealed cloth bag pertaining container ESPU2059060, FSCU7848501, GATU1137110, JCLU1254971, PRSU1580962 and SHKU3422420 registered here vide lab No. 13 to 18 respectively. On opening each bag, it was found to contain the sample inside. Each of the six samples as received is in the form of a cut piece of metal sheet in rectangular shape.

Each of the six samples meet the chemical composition of stainless steel.

No such coating/ layer is present in the received samples.

No such surface defects are observed in the received samples.

Based on the physical appearance, it may be considered as other than scrap.

Sealed remnant returned.

01/05/25

गजेन्द्र सिंह / GAJENDRA SINGH
ASSISTANT CHEMICAL EXAMINER

1, Council House Street, Kolkata-700001

M. Maity 01.05.2025

51. We find that the Revenue has proceeded on the same premise as they have done in respect of the second consignment. Therefore, we refrain from making the same detailed observations once again. The

finding given by us and conclusion arrived at by us for the second consignment squarely holds good in respect of the third consignment also.

52. As a result we set aside the enhanced value of Rs.1,93,25,576 in respect of IGM No.2394766 dated 11.12.2024. We also set aside the confiscation and penalty imposed for this consignment.

53. Coming to the penalties imposed on the second and third appellants, who are Directors, we find that no specifics have been given as to how they are responsible for the scrap bought by them as per the value given in the Invoice of the exporter, and as to why the test report given towards the pre-shipment inspection should not have been trusted by them. Moreover, we have found in the above paragraphs that the allegations against the importer company in respect of all the three consignments are legally not sustainable. The enhanced values and penalties and absolute confiscation have been set aside as the per detailed order given. Therefore, the penalties under Section 112 (a) and under Section 114 AA against both the appellants also do not survive. We set aside the penalties imposed on them.

54. In respect of the third consignment, since the absolute confiscation and the enhanced value has been set aside along with the penalties thereon, the appellant has the option to file the Bill of Entry for clearing the goods for home consumption.

55. The appellants apart from praying to set aside the impugned order, have also submitted that in the past they had to pay huge amount on account of demurrage and other charges. They have prayed that the authorities may be directed to issue a letter waiving the same.

56. It would be relevant to go through the Handling of Cargo in Customs Areas Regulations, 2009, wherein the Regulation 6(1) reads as under:

> **"6. Responsibilities of Customs Cargo Service Provider.** - (1) The Customs Cargo Service provider shall -
>
> ….
>
> (l) subject to any other law for the time being in force, shall not charge any rent or demurrage on the goods seized or detained or confiscated by the proper officer;"

57. We have also gone through some of the relevant case laws on the issue, which are discussed below:

(2025) 31 Centax 448 (Cal.)
Vinod Kumar Jain
Vs Rajesh Jindal, Principal Commissioner of Customs (Port)

2. We also note that the department has not issued the detention certificate for waiver of detention charges and other charges and it appears that only for a partial period such certificate has been issued. The department should not frustrate the order and direction issued in our judgment and order dated 24.11.2021, more particularly, when the department has not preferred any appeal against our judgment and the same has attained finality. Therefore, the department is directed to issue detention certificate for the entire period of detention, that is, till the goods are released in terms of the direction issued earlier.

2019 (367) E.L.T. 972 (Mad.)
AGRO 1 STOP
Vs C C , CHENNAI-II

6. The petitioner has also prayed for waiver of demurrage charges incurred in respect of the detained consignments. In the light of Rule 6(1) of the Handling of Cargo in Customs Areas Regulations, 2009, which provides that the Customs Cargo Provider shall not, subject to any other law for the

time being in force, charge any rent or demurrage on the goods seized or detained or confiscated by the Superintendent of Customs or Appraiser or Inspector of Customs or Preventive officer or examining officer, as the case may be, there shall be a waiver of demurrage charges.

2021 (378) E.L.T. 643 (Tri. - Mumbai)
S.G. INTERNATIONAL
Vs C C , NHAVA SHEVA-I

4.13 In respect of detention and demurrage charges in their letter dated 18-10-2021, Revenue has stated as under :

"3. In regards to detention waiver, it is to that this office will follow Regulation 6(1)(l) of the Handling of Cargo in Customs Areas Regulations, 2009 which states that -

The Customs Cargo Service provider shall -

Subject to any other law for the time being in force, shall not charge any rent or demurrage on the goods seized or detained or confiscated by the Superintendent of Customs or Appraiser or Inspector of Customs or Preventive officer or examining officer as the case may be"

Taking the note of the above submission made by the Revenue before us and admitting that these goods have been detained by them, we are of the opinion that these charges should be waived and proper certificate in this regards be issued by the concerned authorities.

58. We find that the ratio laid down in the case law is squarely applicable to the facts of the present case. Therefore, we direct the Revenue authorities to issue complete waiver order towards demurrage and other charges in respect of the detained consignments.

59. To summarize:

(a) It is held that the all the three consignments imported by the appellants are stainsteel scrap falling under CTH 7204 2190 and not under under CTH 7220 2090 as has been held by the Revenue.

(b) The enhanced value arrived at by the Revenue in respect of all the three consignments stand set aside.

(c) The absolute confiscation order has been set aside in respect of all the three consignments.

(d) The penalties imposed on the importer appellant and the other two appellants [Directors], stand set aside.

(e) The appellant is eligible to file Bill of Entry for the third live consignment with IGIM Nol2394766 dated 11.12.2024

(f) The Revenue is directed to issue a letter towards complete waiver of demurrage / detention charges for the consignments held with the Customs as on date.

60. The impugned order is set aside and the Appeals are allowed.

(Order pronounced in the open court on 06.10.2026.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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