Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO.1

Customs Appeal No. 10134 of 2026-DB

(Arising out of OIO-MUN-CUSTM-000-COM-36-25-26 dated 20/11/2025 passed by the Commissioner of Central Excise, Customs- Mundra)

VASKO STEEL PRIVATE LIMITED **........Appellant**
B-703 & 704, Solitaire Park,
Near Divya Bhaskar Office,
S.G. Highway, Ahmedabad,
Gujarat-380054

VERSUS

COMMISSIONER OF CUSTOMS- MUNDRA **........Respondent**
Office of the Pr. Commissioner of Customs,
Customs House, Mundra Kutch,
Mundra Port, And Special Economic Zone,
Mundra, Kachchh-370421

With

- **(i)** **Customs Appeal No. 10250 of 2026 (VASKO METALLOYS PRIVATE LIMITED)**
- **(ii)** **Customs Appeal No. 10251 of 2026 (VINAYE JAIN)**
- **(iii)** **Customs Appeal No. 10252 of 2026 (VINAYE JAIN)**
- **(iv)** **Customs Appeal No. 10253 of 2026 (MADHUR JAIN)**
- **(v)** **Customs Appeal No. 10254 of 2026 (MADHUR JAIN)**

APPEARANCE:
Shri Manish Jain, Advocate for the Appellant
Shri R Kumar, Superintendent (AR) appeared for the Respondent

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

FINAL ORDER NO. 10300-10305/2026

DATE OF HEARING: 06.04.2026
DATE OF DECISION: 23.04.2026

SOMESH ARORA

M/s. Vasko Steels Private Limited (VSPL; in short) and M/s. Vasko Metalloys Private Limited (VMPL; in short) (hereinafter collectively referred to as “Appellants”) are, *inter alia*, engaged in the wholesale trading of iron and steel articles. In the course and furtherance of business, the Appellant imported Cold rolled stainless steel coild (hereinafter referred to as “subject goods”) from China by classifying them under CTH 7220 90 22 of the Customs Tariff Act, 1975.

1.1 **Specific allegations against the Appellant:**

(a) Undervaluation of subject goods.

- The department has alleged that the subject goods are imported by declaring lower values than the actual transaction values in order to evade customs duty with respect to the BoEs mentioned in Annexure A-1 and B-1 to the SCN F. No. GEN/ADJ/COMM/549/2024-Adjn dated 21.11.2024. The allegations are based on :- i. Note retrieved from the Mobile Phone of Mr. Madhur Jain & subjected to forensic retrieval; ii. Comparison with the import prices of M/s. Shah Foils Ltd.; iii. Comparison with the import prices of other Delhi-based importers.

(b) Misclassification and denial of exemption notification No. 50/2018-Cus:

- The impugned goods have been misclassified under CTH 7220 90 22 to evade the applicable Customs Duty with respect to the BoEs mentioned in A-2 and B-2 to the SCN dated 21.11.2024. The details of the impugned goods are as follows:

Description of the Goods	**Classification according to Appellants**		**Classification proposed by the Department**	
	Description	**CTH**	**Description**	**CTH**
Cold Rolled Stainless Steel Coils	Nickel Chromium austenitic type-Flat-rolled products of Stainless Steel, of a width less than 600 mm	7220 90 22	Other Flat-rolled products of Stainless Steel, of a width less than 600 mm	7220 90 90

- The allegations were based on the following grounds:

  i. As per the Mill Test Certificate issued by the manufacturer of goods, the coils contain a higher percentage of chromium and magnesium instead of Chromium and nickel, and do not contain a maximum substitute of nickel. Thus, the said goods do not fall under the category of Nickel chromium austenitic type.

ii. That under BoE No. 4576792 dated 05.07.2021, the Country-of-Origin Certificate mentions the name of the supplier, i.e., M/s. MFY Metal Company Limited, Hong Kong, as a third-party operator, which was other than the original manufacturer of the goods, i.e., M/s. Shenzhen Guangyulong Trade Co., Ltd, Shenzhen, China. Thus, the certificate of origin for which the invoice is issued by a non-party is not valid.

1.2 Consequently, the OIO No. MUN-CUSTM-OOO-COM-36-25-26 dated 20.11.2025 was passed by the Commissioner wherein he confirmed differential duty demand of Rs. 2,94,01,991/- against M/s Vasko Steel Private Limited and Rs. 68,70,721/- against M/s Vasko Metalloys Pvt Ltd in terms of Section 28(4) of the Customs Act, along with interest in terms of 28AA of the Customs Act. Furthermore, the penalty was imposed under Section 114A of the Customs Act as follows:-

Appeal No.	**Relevant Period**	**Subject Goods**	**Penalty imposed and Section of the Customs Act, 1962**
C/10134/2026 Vasko Steel Private Limited	01.06.2021-15.11.2022	Cold Rolled Stainless Steel Coils under CTH 7220 90 22.	Penalty of **Rs. 2,94,01,991/-** under **Section 114A** of the Customs Act, 1962
C/10251/2026 Shri Vinaye Jain, Director of Vasko Steel Pvt. Ltd.			(a) Penalty of **Rs. 29,00,000/-** under **Section 112(a)**. (b) Penalty of **Rs. 50,00,000/-** under **Section 114AA**.
C/10253/2026 Shri Madhur Jain, Marketing Manager of Vasko Steel Pvt. Ltd.			(a) Penalty of **Rs. 29,00,000/-** under **Section 112(b)** of the Customs Act, 1962. (b) Penalty of **Rs. 80,00,000/-** under **Section 114AA**.
C/10250/2026	27.11.2019-06.09.2021		Penalty of **Rs. 68,70,721/-** under **Section 114A**.

Vasko Metalloys Private Limited			
C/10252/2026 Shri Vinaye Jain, Director of Vasko Metalloys Pvt. Ltd.			(a) Penalty of Rs**. 6,50,000/-** under **Section 112(a)**. (b) Penalty of **Rs. 25,00,000/-** under **Section 114AA**.
C/10254/2026 Shri Madhur Jain, Marketing Manager of Metalloys Steel Pvt. Ltd.			(a) Penalty of **Rs. 6,50,000/-** under **Section 112(b)**. (b) Penalty of **Rs. 40,00,000/-** under **Section 114AA**.

2. Submission of the party are as follows: -

A. On the issue of Valuation:

(a) The department cannot rely upon the Note derived from the personal electronic device of Shri Madhur Jain, as the goods mentioned in the note are not comparable in terms of specification and quantity, and there is no evidence that said email has been acted upon.

- Vide para 12.4 of the Impugned Order, Ld. Commissioner has re-determined the value of goods mentioned in BoE at Sr. No. 2 to 3 of Annexure A-1 (VMPL) of the SCN and Sr. No. 12 to 16, 18 to 21 of Annexure B-1 (VSPL) of the SCN based on the Note retrieved from the personal electronic device of Shri Madhur Jain.
- There are only 4 BoEs whose transaction values have been derived from the said note retrieved from the phone of Mr. Madhur Jain. With respect to these four BoEs, there is a mismatch between the specification of goods mentioned in the said Note and the actual goods imported by the Appellants as detailed below:-

(i) Bill of Entry No. 5328725 dated 06.09.2021- **Data '0.55 2B units CIF 1635: 5 cntrs'** is correlated to goods imported under Bill of Entry No. 5328725. The thickness of goods imported under the said Bill of Entry is 0.3 mm and not 0.55 mm as evident from Invoice No. TGP20210803A-1 dated 18.8.2021. Secondly, the data shows 5 containers, whereas the Bill of Entry and other relevant documents such as B.L and Packing List establishes that only 2 containers have been imported.

(ii) Bill of Entry No. 5568735 dated 24.09.2021 - The **data '0.30 BA unslit CIF 1720: 5 cntrs'** is co-related to goods imported under Bill of Entry No. 5568735. The data shows 5 containers whereas the Bill of Entry and other relevant documents such as B.L and Packing List establishes that only 2 containers have been imported under the said Bill of Entry.

(iii) Bill of Entry No. 5924358 dated 21.10.2021 - The **data '0.30 BA unslit CIF 1780: 5 cntrs'** is co-related to goods imported under Bill of Entry No. 5924358.The thickness of goods imported under the said Bill of Entry is 0.9 mm and 1.15 mm not 0.30 mm as evident from Invoice No. ARS 20210929-02-1 dated 29.9.2021. Secondly, the data shows 10 containers whereas the Bill of Entry and other relevant documents such as B.L and Packing List establishes that only 2 containers have been imported under the said Bill of Entry.

(iv) Bill of Entry No. 6200546 dated 11.11.2021 - The **data '13-10 2125 0.30 ba: 12 cntrs'** is co-related to goods imported under Bill of Entry No. 6200546. The data shows 12 containers whereas the Bill of Entry and other relevant documents, such as B.L and Packing List establish that only 2 containers have been imported under the said Bill of Entry.

Thus, it was submitted that the data in the Note is not in consonance with the subject goods which are imported.

- It is pertinent to note that there is no data for the rest of the BoEs mentioned in Table at Para 11.5 of the Impugned OIO i.e., Bill of Entry No. 5329646 dated 06.09.2021, 5907570 dated 19.10.2021, 5907622 dated 19.10.2021, 5924364 dated 21.10.2021, 6459131 dated 29.11.2021, 6475041 dated 30.11.2021 and 6765905 dated 20.12.2021 for which undervaluation is alleged based on the said note.
- Reliance in this regard is placed on the decision of United Traders (India) vs. Commissioner of Customs, Chennai, 1999 (112) ELT 349 (Tri.-Mad) maintained by the Supreme Court in Commissioner v. United Traders (India) - 2001 (128) E.L.T. A70 (S.C), wherein it is held as under:

> *"6. We have carefully considered the pleas advanced by both the sides. The ld. Advocate has rightly pointed out that the quotation on which the department has relied upon is not addressed to any one. It is not signed by any one and apart from that there is no evidence that this quotation has been acted upon in case of any import in India.*
>
> *7. On the other hand, from reliance placed by the ld. SDR for the Revenue on 1995 (79) E.L.T. 322, we observe, is not applicable to the present facts and circumstances of the case. In that case, as is evident from para 3 of the said judgment, there were other evidences available to rebutt the price of the appellants therein namely Pan Asia Enterprises. In the present case, there is no other evidence whatsoever. Similarly, the reliance placed by ld. SDR on Manju Verma case is also not applicable to the facts and circumstances of the case. In that case, the quotation was produced by the appellants, Manju Verma in support of the price declared by her for import of the car. It is in those circumstances that quotation was relied upon which is not applicable to the present facts of the case. Therefore, we are of the view that the ld. Advocate has placed a correct reliance on Laxmi Colour Lab as also on Krison Electronics Systys Ltd."*
>
> *(Emphasis Supplied)*

(b) Declared value cannot be rejected based on imports of M/s. Shah Foils Pvt. Ltd. as goods differ in thickness, width, and type. The same cannot be considered as comparable goods and cannot from the basis of rejection of declared value.

- Vide para 12.5 of the Impugned Order, Ld. Commissioner has re-determined the value of good in BoEs mentioned at Sr. No. 22 to 31 of Annexure B1 (VSPL) based on the import price data of M/s. Shah Foils. They imported B-grade/C-grade coils of odd sizes, meant for trading and supply to furniture fitting manufacturers, whereas the goods imported by M/s Shah Foils Ltd. are prime-grade coils required for cold rolling. Their goods cannot be used for cold rolling and are not commercially interchangeable with prime-grade coils.
- The table below establishes that the goods imported by Appellants are not comparable and cannot be termed as similar to those imported by M/s Shah Foils Ltd. within the meaning of Rule 2(f) of the Customs Valuation Rules:

	Shah Foils Ltd.			**Vasko Steels P Ltd**			**Exhibit**
Sr. No.	**BoE No.**	**Thickness (mm)**	**Width (mm)**	**BoE No.**	**Thickness (mm)**	**Width (mm)**	**Index of BoEs**
1	9012065	2.2	600 and 605	9012127	0.29	510	**Y1**
2	9304663	0.9	600, 620, 720 and 730	9822474	0.54	730	**Y2**
3	9701677	0.8	600, 610 and 615	2762913	0.29	510	**Y3**
4	9701677	0.8	600, 610 and 615	3123696	0.29	510	**Y3**
5	3236062	0.8 & 0.9	603 and 650	2849040	0.29	510	**Y4**
6	3237180	0.8 & 0.9	650	3075229	0.29	510	**Y5**
7	3439493	0.9 & 1.45	600	3319105	0.29	510	**Y6**
8	3540377	1.2 & 1.45	600	3319103	0.29	510	**Y7**
9	3886806	0.5 & 0.65	690 & 730	2795582	0.26, 0.3, 0.32, 0.33, 0.4, 0.45, 0.5	49.5, 79, 58.5, 79.5, 77.5	**Y8**
10	3964572	0.9 & 1.2	690 & 730	3236765	0.38	305, 355, 406, 457, 510	**Y9**

- Reliance in this regard is placed on the decision of M/s Ruchi Enterprise Versus Commissioner of Customs –Kandla, 2025 (8) TMI 103 - CESTAT AHMEDABAD, wherein it is held as under:

"6. In view of above, we hold that the evidences relied upon by the department in this case for alleging undervaluation by the appellant are not admissible as

neither supplier of the goods is same nor similarity or identical nature of the goods has been established by the department. Reliance on the party's letter dated 15.02.2008 which later on, was retracted on 20.02.2008 is also not sustainable as the same has been obtained under duress. Therefore, we hold that the department has not been able to sustain its charges of undervaluation against the appellant. Agreeing with the contention of the appellant, we allow the appeal along with consequential benefits, if any."

(Emphasis Supplied)

- Reliance in this regard was also placed on the following decisions:

  (i) Commissioner of Customs, Ahmedabad v. M/s Hamilton Housewares Pvt. Ltd., 2018 (10) TMI 274 – CESTAT Ahmedabad

  (ii) Basant Industries vs. Addl. Collector of Customs, Bombay, 1996 (81) ELT 195 (S.C.)

  (iii) Aditya Fuels Ltd. vs. Commissioner of Customs, Kandla, 2006 (201) ELT 464 (Tri.-Bom)

  (iv) Commissioner of Cus., Vishakhapatnam vs. Aggarwal Industries Ltd., 2011 (272) ELT 641 (S.C.)

  (v) Mark Auto Industries Ltd. vs. Commissioner of Customs, New Delhi, 2003 (162) ELT 261 (Tri.-Del)

  (vi) Sarda Energy and Minerals Ltd. vs. Commr. of Central Excise, Raipur, 2018 (359) ELT 262 (Tri. -Del)

  (vii) Highland Liquors Pvt. Ltd. Vs. Commr. of C. Ex., New Delhi, 2018 (360) ELT, 539 (Tri. - New Delhi)

  (viii) Kelvin Infotech Pvt. Ltd. vs. Commissioner of Cus., C. Ex. & S.T., Meerut, 2015 (316) ELT 146 (Tri.-Del) Affirmed by Supreme Court in Commissioner v. Kelvin Infotech Pvt. Ltd. - 2016 (339) E.L.T. A291 (S.C.)

- Accordingly, Rule 5 of the Valuation Rules, for the purpose of arriving at the value of the Bills of Entry at Sr. Nos. 22 to 31, was not sustainable in the eyes of the law, and the charge of undervaluation is required to be set aside.

(c) Declared value cannot be rejected based on the imports of Delhi-based importers, as goods differ in thickness, width, and type. Thus, the same cannot be considered as similar goods.

- Vide para 12.6 of the Impugned Order, the Ld. Commissioner has re-determined the value of the BoE mentioned at Sr. No. 1 of Annexure A-1 (VSPL) and Sr. No. 1 to 11, 17 of Annexure B1 (VSPL) based on the import price data of other Delhi-based importers.
- The quality of steel, viz., prime, b-grade, c-grade, etc., surface finish type, etc., are important parameters which alter its price. In the present case, there is nothing on record to identify such parameters and quality of the goods imported by Delhi-based importers so as to compare the same to the subject goods under consideration.
- The value of goods covered under Bills of Entry at Sr. Nos. 1 to 11 of Annexure B-1 to the Show Cause Notice has been proposed to be enhanced on the basis of imports by other importers.
- It was submitted that the value of USD 1363 has been arrived at on the basis of Invoice No. MFY210324SS02-1 dated 6.7.2021 issued by M/s MFY Metal Company Ltd. to M/s Shri Mahadevji Exports as evident from the table to para 11.7 of the impugned notice. A careful scrutiny of the said invoice indicates that the said rate pertains to goods having a thickness of 0.4 mm. The said invoice also indicates that the rate of goods of thickness other than 0.4 mm is different. In the instant case, thickness of goods under import varies from the thickness of the comparable goods considered. The thickness of the goods under consideration is tabulated as follows:

Sr. No.	BoE No.	Thickness (mm)	Exhibit of Index of Bill of Entry
1	4162752	0.3	
2	4458950	0.28, 0.3, 0.31 and 0.29	
3	4458948	0.33, 0.34, 0.35, 0.56 and 0.59	

4	4576851	0.29 to 0.37	**Exhibit-AA**
5	4576796	0.29, 0.33, .037 and 0.41	
6	4576792	0.3	
7	4777180	0.51, 0.53 and 0.54	
8	4805987	0.36 to 0.39	
9	4821961	0.36 and 0.38	
10	5001534	0.28, 0.3 and 0.32	

- Actual transaction value as declared by Appellants has to be accepted in the absence of any special circumstances. Reliance is placed on the decision in Agarwal Industries v. Commissioner of Customs Vizag –Tri.-Bangalore, 2006 (193) E.L.T. 421 (Tri. - Bang.), affirmed by the Supreme Court in Commissioner of Cus., Vishakhapatnam vs. Aggarwal Industries Ltd., 2011 (272) ELT 641 (S.C.), wherein it is held as under:

  "2. *In the above cases, the importers entered into contract with foreign suppliers for delivery of goods within a specified period at a contracted price. However, due to certain circumstances, the foreign supplier was not in a position to supply the goods before the due date as per contract. Hence, the contract was extended. Ultimately, the goods were supplied at the contracted rate. However, on the same date of importation, the same ship also carried the same goods meant for other parties. In those cases, the prices were different. For example, in a particular case, the contracted price is 450 USD per MT but on the same date, for the same goods, there is another consignment where the price is 500 USD. The case of the Revenue is that that the correct value for purposes of assessment would be only 500 USD as it represents the correct contemporaneous value. Hence, the transaction value declared by the importer was rejected. The lower authority demanded differential duty. The Commissioner (Appeals) upheld the order of the lower authority. This Bench had an occasion to deal with similar issues. In the case of Andhra Sugars Ltd. v. CC, Vizag, by Final Order No. 976/2005, dated. 22-6-2005 [2006 (193) E.L.T. 68 (Tribunal)], a majority view was taken that transaction value can be rejected only if any of the situations mentioned in Rule 4(2) of the Customs Valuation Rules, 1988 warrant the same. While taking such a decision, the Bench followed the decision of the Apex Court in the case of Eicher Tractors Ltd. v. CC, Mumbai - 2000 (122) E.L.T. 321 (S.C.). In the above mentioned case, the Supreme Court has held that in the absence of 'special circumstances', price of imported goods is to be determined under Section 14(1)(A) in accordance with the Customs Valuation Rules, 1988.* ***The***

'special circumstances' have been statutorily particularised in Rule 4(2) and in the absence of these exceptions, it is mandatory for Customs to accept the price actually paid or payable for the goods in the particular transaction. In all the cases, we find that the transaction value has been arrived at purely on commercial considerations based on contracts. The supplier, in order to honour the contracts, supplied the goods at the contracted price. There is also no allegation that the appellants paid to the supplier more than the contracted value. Under these circumstances, there are actually no grounds to reject the transaction value. *The reliance on Rajkumar Knitting Mills case - 1998 (98) E.L.T. 292 (S.C.) does not appear to be correct as the same was rendered in the context of the old law. In view of the above observations, we allow all the appeals with consequential relief, if any."*

- Reliance in this regard is placed on the following decisions:

    (i) Commissioner of Customs, Nhava Sheva-III vs. Granite India, 2023 (6) CEN 10 (Tri.-Bom) Affirmed by the Supreme Court in (2023) 6 Centax 13 (S.C.)

    (ii) Oswal Fats & Oils vs. Commissioner of Customs, Amritsar, 2007 (220) ELT 795 (Tri.-Del)

- Further, various other importers have imported identical/similar goods during the same period for a similar value as declared by the appellants. Thus, the declared value cannot be rejected and has to be accepted as transaction value in the present case.

(d) Duty Demand is time-barred

- The SCN is issued on 21.11.2024, for imports made for the period of November 2019 to 15 November 2022. As per Section 28(1), the SCN can be issued within two years from the relevant date. In the instant case, demand has been raised under Section 28(4) of the Customs Act, 1962 which is not invokable in this case as there was no suppression or collusion on the part of Appellant.
- The import data of Shah Foils and other Delhi-based importers, which the department relies upon to allege undervaluation, was already available with the department. Thus, it cannot be alleged that there is suppression on the part of the appellant.

- The Note retrieved from Mr. Madhur Jain's phone cannot be relied upon by the department as the specification and quantity of goods mentioned in the Note is not comparable with the specification and quantity of actual imports by appellants.
- Reliance in this regard is placed on the following decisions:
  - (i) Daxen Agritech India Pvt. Ltd. vs. Principal Commissioner of Customs, New Delhi [2023-12-TMI-1080-CESTAT-DEL]
  - (ii) Granite India Limited vs. Collector Central Excise, Coimbatore 1997 (92) ELT 84 (Tri. -Mad)

<u>B. Classification and availment of Exemption Notification No. 50/2018:</u>

(a) The issue with respect to classification of subject goods is squarely covered by the decisions of M/s Shah Foils Ltd., Shri Kartik Ramesh Shah, Suncity Sheets Pvt Ltd, Mukesh Agarwal Versus C.C. – Mundra, 2024 (5) TMI 336 - CESTAT Ahm

- Vide para 15 of the Impugned OIO, it has been held that that the subject goods are not austenitic stainless steel and are misclassified under CTH 7220 90 22 and re-classified under CTH 7220 90 90 as they contain less than 1.3% of Nickel and less than 14% of Chromium.
- Stainless Steel having Nickel content of as low as 0.2%, and Chromium range of 13.5% to 24% can be classified as austenitic stainless steel. They rely on the decision of M/s Shah Foils Ltd., Shri Kartik Ramesh Shah, Suncity Sheets Pvt Ltd, Mukesh Agarwal Versus C.C. – Mundra, 2024 (5) TMI 336 - CESTAT Ahm, wherein it is held as under:

> *"5. We find that in the entire case there is no dispute about…*
>
> *…*
>
> *From the above clarification particularly second para in para b, it was clarified that in IS 15997:2012,* ***there are many grades on Austenitic Stainless Steel ranging from Nickel as low as 0.2% to 14% with a varying Chromium range of 13.5% to 24%. It was further clarified that***

irrespective of chemical composition and percentage of alloying element of these grades in 200 series. (such as 201, 202, N1, N2, N3, N5, N6, N7 are called austenitic stainless steels together with 300 series grades). With this specific clarification, it is seen that in austenitic stainless steel, the Nickel content can vary as low as 0.2% to 14%, whereas in the present case the goods contain 1.010-1.060% and Chromium is 12.5%, therefore, it is clearly in compliance to the specification for classifying the product as „Austenitic Nickel Chromium Stainless Steel". We find that department's reliance on the websites of M/s Aalco metals ltd. (England and Wales) and M/s ASM international Limited cannot be a conclusive factor to classify the product as other than Austenitic Nickel Chromium Stainless Steel for the reason that from the said evidence it is clear that not only those products which contain 4.5% to 12% Nickel will fall under Austenitic Stainless Steel but even the low content Nickel in Stainless Steel will also fall under Austenitic Stainless Steel. Therefore, the mere reliance on the websites of M/s Aalco metals ltd. (England and Wales) and M/s ASM international Limited is incorrect for arriving at classification. Therefore, on the fact of the case which is not under dispute and on the authority mainly Indian Standards, the goods imported by the appellant are correctly classifiable under Chapter Tariff Heading 7220 9022 as Nickel Chromium Austenitic Type."

In view of the above, subject goods are correctly classified under CTH 7220 90 22 of the Customs Tariff Act.

(b) The Ld. Commissioner in para 20.1 has stated that the Appellant is not entitled to the exemption benefit under Notification 50/2018 dated 30.06.2018 as the invoices issued by the non-party operator render the Certificate of Origin ineligible. They are entitled to Exemption Notification No. 50/2018 as there is no dispute that goods are originated in China. Merely because invoices are issued by non-party, the exemption cannot be denied. Origin Rules nowhere make any provision that the preferential trade will not be admissible if the invoice is issued by a non-party.

- A plain reading of the above statute expressly demonstrates that the goods which are covered by the preferential trade and that which are consigned directly from one participating State to another participating State are eligible to the preferential concessions subject to fulfilment of the condition (a) OR (b). In the instant case, there is no dispute regarding non-fulfilment of either of the conditions.

- Further, the Origin Rules nowhere make any provision that the preferential trade will not be admissible if the invoice is issued by a non-party. All that the Origin Rules stipulate is that the goods ought to be covered under the preferential trade and be consigned directly from the participating State within the meaning of Rule 6.
- Even otherwise, it was submitted that the Certificate of Origin as well as the Commercial Invoices were uploaded in e-Sanchit at the time of filing of the Bill of Entry, and all the relevant details thereof were available with the department. Objection regarding inadmissibility of Notification No. 50/2018-Cus on the ground of third-party invoicing could have been raised at the time of assessment of the concerned Bills of Entry.

(c) Extended period of limitation is not invokable as there is no suppression. Thus, the demand is time-barred with respect to the classification and exemption benefit on the subject goods.

- The SCN is issued on 21.11.2024, for imports made for the period of November 2019 to November 2022. As per Section 28(1), the SCN can be issued within two years from the relevant date. However, in the instant case, the demand has been raised under Section 28(4) of the Customs Act, 1962 which is not invokable in this case as there was no suppression or collusion on the part of the Appellant.
- The demand is time-barred with respect to the classification, as SCNs have been issued by the department on the basis of Mill Test Certificates provided by the Appellant. On the aspect of exemption, there was no suppression, as all the details were provided by the Appellant at the time of import. Thus, there is no suppression on the part of the Appellant.
- They rely on the decision of Gulshan Exim Private Limited, Ashok Kumar, Gupta Steel, Mohan Jain, Bhagvan Shri Strips Pvt. Ltd. Versus C.C. -

Mundra, Gujarat, 2025 (12) TMI 389 - CESTAT Ahm., wherein it is held as under:

"6.7 As regard invocation of extended period, we find that both factual as well as various legal considerations are involved in the present matters as discussed above, for determining correct classification of the imported goods. We further find that the SCNs have been issued by the department on the basis of information provided/ made available by the party. We therefore, are not inclined to allow invocation of extended period."

- In view of the above, subject goods are not liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, no interest is impossible under Section 28AA as the demand for Custom Duty is not maintainable. Likewise, penalty was not imposable under Section 114A of the Customs Act, 1962, as the demand of duty is not sustainable. Since the demand on the Company was liable to be set aside, the penalty imposed on Mr. Madhur Jain and Mr. Vinaye Jain is also liable to be set aside.

3. Department on the other hand submitted that the officers during search of the office premises of M/s VMPL & M/s VSPL on 22.11.2022 seized incriminating documents, one Apple Laptop, and one Samsung mobile phone under Panchnama dated 22.11.2022. The electronic devices were sent to the National Forensic Science University (NFSU), Gandhinagar. A working copy of the hard disc was examined at DRI office. A critical Note (Note No. 39) containing actual rate/CIF values of goods imported was retrieved from Shri Madhur Jain's mobile phone (RUD-05) which conclusively established that actual transaction values were far higher than what was declared in the Bills of Entry (BoEs). Statements of the representatives of CHA firms (M/s Shri Balaji Logistics, M/s R.R. Logistics), and of Shri Vinaye Jain and Shri Madhur Jain were recorded.

3.1 The Show Cause Notice raises two primary issues:

Issue 1: Under-Valuation of Imported Goods

The importers declared CIF prices at USD 750–1,000/MT whereas evidence recovered from Shri Madhur Jain's mobile phone and comparison with contemporaneous imports by other importers (particularly M/s Shah Foils Limited, Ahmedabad) established that actual prices were USD 1,363–2,125/MT. The SCN alleged:

- Systematic under-declaration of CIF values in BoEs
- The Note found in Madhur Jain's phone contained actual transaction prices per consignment, corroborated by BoE details and shipment weights
- Contemporary imports by M/s Shah Foils Limited from the same overseas suppliers Star Industrial Group Ltd at the same time period were at much higher prices (e.g., USD 1,525/MT vs. USD 1,200/MT declared by VSPL.
- Delhi-based importers procuring same goods from the same MFY Metal Company Ltd., China declared prices at USD 1,363/MT for the same period

The SCN sought re-determination of transaction value under Rules 3–5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, read with Section 14 of the Customs Act, 1962.

Issue 2: Mis-Classification of Imported Goods

The imported goods, i.e., Cold Rolled Stainless Steel Coils Grade J3, were classified by the importers under CTI 72209022 (Nickel Chromium Austenitic Type) to avail 45% tariff concession under Notification No.50/2018-Customs dated 30.06.2018. The SCN alleged that correct classification was CTI 72209090 (Other), because:

- Mill Test Certificates/Inspection Certificates produced by the importers showed Chromium (Cr) content of approximately 13% and Nickel (Ni) content of approximately 1% (sometimes 0.773%)
- For stainless steel to qualify as "Nickel Chromium Austenitic Type" (200 series), it must have Ni content of 3.5%–6% and Cr content

of 16%–19% (as per IS 6911:2017 and BIS standard for Austenitic Stainless Steel)

- The imported goods, with Ni content of ~1% and Cr ~13%, are not Austenitic Stainless Steel and do not qualify under CTI 72209022
- Shri Madhur Jain himself admitted that Grade J3 is a "customised grade of 200 series having low Nickel content (around 1%)" — imported mainly from China
- From the period Nov 2019 to July 2021, the same goods were classified under CTI 72202090 by one importer and 72209090 by another whereas the same supplier (MFY Metal Company Ltd.) supplied the goods; only the CTI was changed after Notification 50/2018 to avail the concession
- The invoices being issued by a non-party (Hong Kong-based ARS Technologies) rendered the COO certificates ineligible for preferential treatment under Notification 50/2018

3.3 Department on the basis of findings in the impugned order submitted as follows:-

<u>(a) On Classification:</u>

- The goods were Cold Rolled Stainless Steel Coils Grade J3 — a customised grade of 200-series stainless steel with Chromium ~13% and Nickel ~1%. The tariff heading 72209022 specifically covers "Nickel Chromium Austenitic Type" flat-rolled products of stainless steel. This requires the goods to be of Austenitic type. Every internationally accepted standard — IS 6911:2017, Steel Authority of India's User Guide, and AISI standards — mandates minimum Nickel of 3.5%–6% and Chromium of 16%–19% for Austenitic classification. The imported goods, with Ni at ~1%, categorically fail this test.
- <u>Counter to appellant's IS 15997:2012 argument:</u> The adjudicating authority has rightly distinguished IS 15997:2012 as pertaining to stainless steel sheets/strips for utensils — it has no application to the

classification of Cold Rolled Stainless Steel Coils under the Customs Tariff. IS 6911:2017 is the relevant standard.

- Counter to Shah Foils precedent: The facts of Shah Foils Ltd. (2024) 19 Centax 248 (T) are distinguishable — the chemical composition of goods in that case was found to be similar to the Austenitic specification. In the instant case, the Mill Test Certificates themselves — filed by the appellant at the time of import — show Ni ~0.77–1% and Cr ~13%, which rules out Austenitic classification. The admission of Shri Madhur Jain that "J3 is a customised grade of 200 series with low Nickel around 1%" is a clinching piece of evidence against the appellant.
- Even after issuance of Notification 50/2018, the same goods were being classified under CTI 72202090 (without availing the benefit) by one entity until Shri Madhur Jain directed for the change of CTI to 72209022. This demonstrates deliberate, conscious mis-classification.

(b) On Undervaluation:

- The “Note” retrieved from Shri Madhur Jain's mobile phone contains actual CIF rates for each specific consignment corresponding to actual BoE numbers, weights, and dates. These rates (USD 1,635–2,125/MT) are 2–3 times the declared values (USD 750/MT) and are thus, a direct corroborating evidence — not circumstantial inference alone.
- Counter to electronic evidence challenge:

  (i) The mobile phone was seized under a valid Panchnama dated 22.11.2022 in the presence of two independent panchas. It was sent to NFSU Gandhinagar — a Government forensic laboratory for forensic analysis.

  (ii) Shri Madhur Jain himself gave a certificate under Section 138C of the Customs Act and Section 65B of the Indian Evidence Act confirming that the phone was under his control and functioning during the relevant period.

(iii) In his statement dated 06.04.2023, Shri Madhur Jain confirmed that "all rate finalisation was done through WhatsApp" and that "the Note retrieved from his phone contained actual prices" — this is an admission under oath.

- <u>Counter to "no remittance of extra amount" argument:</u> In the case of Collector of Customs, Madras and others vs. D. Bhoormull reported at 1983 (13) ELT 1546 (SC), the Hon'ble Supreme Court held that mathematical proof is not required — credible pattern of undervaluation established through circumstantial evidence suffices. Here, the department has both direct evidence ("**Note"** from Mobile phone with actual **CIF prices**) as well as corroborative (**Shah Foils** / **Delhi-based importers'** contemporaneous prices from same suppliers) evidence.
- <u>Counter to transaction value rejection challenge:</u> Rule 3(2) of CVR 2007 mandates acceptance of declared value only if conditions (a) to (d) are met. The data from Madhur Jain's phone clearly establishes that the declared values are not the true transaction values and the invoiced price was not the actual price paid. Hence, declared value has correctly been rejected under Rule 12.

(c) **<u>On Limitation (Extended Period Under Section 28(4)):</u>**

- This is not a case of mere incorrect classification open to bonafide interpretation. The conduct of the importers — changing the CTI from 72202090/72209090 to 72209022 specifically after issuance of Notification 50/2018 on the instruction of Shri Madhur Jain (admitted in his statement), the systematic pattern of undervaluation across multiple consignments, the maintenance of a secret Note recording actual prices, and the use of a separate Hong Kong-based entity to issue invoices while the Chinese manufacturer issued the COO — all demonstrate deliberate suppression of material facts.

- The appellant argues that all documents were submitted before Customs at the time of import. However, under self-assessment, the importer is responsible for correct declaration. The fact that incorrect CTI declarations were not objected to by Customs at the time of assessment does not amount to knowledge by the Department of the mis-classification. The undervaluation came to light only upon seizure of the phone and forensic examination — both facts clearly falling within the extended period framework.
- <u>Counter to "interpretation of law" argument:</u> Daxen Agritech case reported at 2023-12-TMI-1080-CESTAT-DEL applies where the issue is genuinely one of legal interpretation. Here, it is not interpretation but deliberate mis-declaration — the Nickel content of ~1% is objectively verifiable from the Mill Test Certificates filed by the appellant themselves, and unambiguously fails the Austenitic classification test. Deliberate mis-classification to claim concession is not an "interpretational dispute."

(d) **<u>On penalty under Section 114AA (Shri Madhur Jain):</u>**

- Section 114AA requires knowingly or intentional making of false declarations. Shri Madhur Jain's own statement establishes: (i) he directed for the change of CTI to 72209022 to claim the Notification 50/2018 benefit, (ii) he handled all rate finalisation and was aware that actual prices were higher, (iii) he maintained the Note with actual prices on his own phone. This is conclusive evidence of knowingly and intentional making of false declaration.
- <u>Counter to "no mens rea" argument:</u> The adjudicating authority has rightly observed that Shri Madhur Jain's admission in his statement dated 06.04.2023 clearly establishes *mens rea*. He was not a passive

functionary in the firm but the driving force behind both mis-classification and undervaluation.

(e) **On penalty under Section 114AA (Shri Vinaye Jain):**

- He was the Director of both companies. As Director, it was his responsibility to ensure correct self-assessment. He cannot take shelter behind the acts of Shri Madhur Jain when the latter was handling entire import portfolio of both his companies.

3.4 In a nutshell, Department has strong case of mis-classification and undervaluation on the basis of :

- Shri Madhur Jain's admission in his statement confirming the actual prices, directed CTI change, and authentication of the Note by him via Section 138C certificate.
- The Mill Test Certificates were filed by the appellants themselves which conclusively show Ni ~1%, disqualifying the material under Austenitic classification.
- This is not a bonafide interpretational dispute but deliberate mis-classification with intent to claim Notification 50/2018 benefit and hence, the extended period is fully justified.

4. On the basis of aforesaid submissions by the respective sides, the following issues are framed:-

(i) Whether the subject goods, i.e., Cold Rolled Stainless Steel Coils Grade J3, are classified under CTH 7220 90 22, as declared by the Appellant, or under CTH 7220 90 90, as contended by the Department. Accordingly, whether the Appellant is eligible for the exemption benefit under Notification 50/2018-Cus?

(ii) Whether the allegation of undervaluation is sustainable or not?

(iii) Whether Extended period of limitation under Section 28(4) of the Customs Act is invokable or not?

5. Regarding first issue of classification, we find that this Bench (different constitution) had decided issue of classification of these types of goods in the matter of M/s Shah Foils Ltd and Ors. Vs. Commissioner of Customs, Mundra as reported in 2024 (5) TMI 336 CESTAT-Ahmedabad. We find that Nickel content in the instant case, was as low as 0.20%. It was on such basis, the learned Commissioner, *inter alia*, rejected the classification and consequently the benefit of exemption Notification No. 50/2018 was disallowed. In the matter of Shah Foils Ltd (cited supra), it was held by this bench as follows:-

> *"5. We find that in the entire case there is no dispute about the fact such as the nature of goods, documentation etc. The whole case was made out for change of classification on the basis that the 1% Nickel content in the product will not qualify the imported goods as „Nickel Chromium Austenitic Stainless Steel". The contention of the Revenue is that to qualify as Nickel Austenitic Stainless Steel, nickel content should be ranging from 4.5% to 12%, therefore as per the department, goods are not classifiable under 7220 9022. The important point to be examined is to qualify the product namely, Nickel Chromium Austenitic Stainless Steel whether it is mandatory to have Nickel content of 4.5% to 12% or otherwise. The Revenue has solely relied upon the information available on websites of M/s Aalco metals ltd. (England and Wales) and M/s ASM international Limited wherein the range of Nickel shown is 4.5% to 12% for a product namely Chromium Nickel Austenitic Stainless Steel. However that information does not further confirm that even if the Nickel percentage is less than that the same will be categorized as Chromium Nickel Austenitic Stainless Steel or otherwise. In this regard, the appellant have produced various authorities to substantiate their claim that even the lower percentage of Nickel content will not change, the category of the product as Nickel Chromium Austenitic Stainless Steel. In this regard, the appellant have relied upon the Indian Standard IS 15997; 2012.*
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> *---*
>
> *In the above Indian Standard and table appended thereto in Serial No. I against the goods designation N1 the Nickel content is shown as 1-2%. Therefore, on the basis of this most authentic Indian Standard on Austenitic Steel, the Nickel content can also be 1% to 2% against N1, therefore, the contention of the Revenue that the only those steel which contain 4.5% to 12% is austenitic steel is incorrect as the said contention is contrary to the specification provided under Indian Standard IS 1597:2012. The appellant have also relied upon an E-mail clarification given by India Stainless Steel Development Association.*
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> *---*

From the above clarification particularly second para in para b, it was clarified that in IS 15997:2012, there are many grades on Austenitic Stainless Steel ranging from Nickel as low as 0.2% to 14% with a varying Chromium range of 13.5% to 24%. It was further clarified that irrespective of chemical composition and percentage of alloying element of these grades in 200 series. (such as 201, 202, N1, N2, N3, N5, N6, N7 are called austenitic stainless steels together with 300 series grades). With this specific clarification, it is seen that in austenitic stainless steel, the Nickel content can vary as low as 0.2% to 14%, whereas in the present case the goods contain 1.010-1.060% and Chromium is 12.5%, therefore, it is clearly in compliance to the specification for classifying the product as „Austenitic Nickel Chromium Stainless Steel". We find that department's reliance on the websites of M/s Aalco metals ltd. (England and Wales) and M/s ASM international Limited cannot be a conclusive factor to classify the product as other than Austenitic Nickel Chromium Stainless Steel for the reason that from the said evidence it is clear that not only those products which contain 4.5% to 12% Nickel will fall under Austenitic Stainless Steel but even the low content Nickel in Stainless Steel will also fall under Austenitic Stainless Steel. Therefore, the mere reliance on the websites of M/s Aalco metals ltd. (England and Wales) and M/s ASM international Limited is incorrect for arriving at classification. Therefore, on the fact of the case which is not under dispute and on the authority mainly Indian Standards, the goods imported by the appellant are correctly classifiable under Chapter Tariff Heading 7220 9022 as Nickel Chromium Austenitic Type."

5.1 It is thus clear that the range of nickel and chromium content in the instant case is at par with the impugned product in the case of M/s Shah Foils Ltd (cited supra). Therefore, the product in the instant case also is claimed by the appellant as classifiable under CTH 7220 9022 as Nickel Chromium Austenitic Type. We also find that the benefit of Notification No. 50/2018-Cus dated 30.06.2018 was denied by the Commissioner on the ground that the same was not available to those goods which are classified under CTH 72209090.

5.2 However, we also note that this Bench with the similar constitution in the matter of Gulshan Exim Pvt Ltd & Ors. Vs. CCE, Mundra Gujarat as reported in 2025 (12) TMI 389 CESTAT Ahmedabad, while deciding classification of similar products i.e. Nickel Chromium austenitic type- Flat-rolled products of Stainless Steel claimed to be falling under heading 7220

9022 with benefit of Notification No. 50/2018-Cus dated 13.06.2018, after distinguishing the decision of Shah Foils Ltd (Supra) remanded the matter on classification aspect by observing as follows:-

> *"6.6 From the sample commercial invoices attached with the appeal, we find that grade 2B has been indicated against surface which shows that the imported goods apart from cold rolling, have also undergone the process of annealing, descaling and skin passed. The HSN Explanatory Notes under Chapter 72 (under the category IV (c) Subsequent manufacture and finishing), provide that the finished products may be subjected to further finishing treatments or converted into other articles by a series of operations such as mechanical working, surface treatment such as Annealing, Descaling, Pickling, Scraping and surface finishing treatment etc. Further from the Explanatory Notes Vol-IV, Chapter 7174 of the World's Custom Organization 7th Edition (2022), it is noted that Chapter heading 7220 borrows and applies provisions of Explanatory Notes of Heading 72.1109, 72.12 & 72.10 which in turn borrows Explanatory notes of 72.08 and 72.09 mutatis mutandis. Therefore, multifarious processes are getting included in expression 'not further worked' to the products of heading 7220. We also find that Chapter Heading 72.11 permits certain processes and allows the same to be worked (for example corrugated, ribbed, chequered, embossed, bevelled or rounded at the edges) and heading 72.12 allows the products to be subjected to more than one type of coating, plating or cladding. Thus, there are processes which are allowed to be further carried out by heading 72.20. Similarly Heading 72.08 to 72.10 by virtue of borrowing, the products can be subjected to hot flattening, annealing, hardening, tempering, case-hardening, nitriding and similar heat treatments to improve the properties of metal. It also permits descaling and various other processes. Similarly 72.09 and 72.10 also allow various processes to be done. Therefore, while deciding the classification, it is important to note as to what are the processes which have been carried out on the imported products and whether processes carried out are within the permissible limits of the heading including the Explanatory Notes of the borrowed headings. The imported goods therefore, need close scrutiny to arrive at the most preferred heading irrespective of what heading has been claimed by the party or has been sought in the Show Cause Notice by the department. We therefore, find that the issue is contentious and various considerations will come to the root of the matter to decide the exact nature of imported goods such as processes it has undergone, it's grade, apart from its composition. In view of our above observation, we find that there is a scope of even going beyond the heading suggested by either party when exact nature of the product gets determined.*
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> *6.7 As regard invocation of extended period, we find that both factual as well as various legal considerations are involved in the present matters as discussed*

above, for determining correct classification of the imported goods. We further find that the SCNs have been issued by the department on the basis of information provided/ made available by the party. We therefore, are not inclined to allow invocation of extended period.

6.8 We also would like to address the issue of the Certificate of Origin being genuine or not? We find that we are concerned with a non-tariff notification which is seeking to give benefit of an international business treaty entered under a preferential agreement by framing Rules of Determination Of Origin Of Goods under Asia Pacific Trade Agreement Rules, 2006. We find substance in the infractions pointed out by the department. We are also aware that we are dealing with a non-tariff notification which though provides a preferential rate on tariffs as mutually Notification No. 94/2006-Cus (NT) dated 31.08.2006 agreed by the countries, has at the heart of it the underlying needs to increase trade between the treaty nations for mutual benefits. This notification deals with Rule on Determination Of Origin Of Goods under Asia Pacific Trade Agreement Rules, 2006. We find such beneficial rules are required to be liberally construed and applied by the Customs Authorities of all the nations. We find that the infraction noted by the department in the show cause notice need to be viewed properly from the angle as to whether the same is only a procedural infraction or has led to a substantive lapse which would lead to denial of benefit to the party. This standard as being laid down by us need to be properly applied by the department.

6.9 We are therefore, inclined to remand the matter to the adjudicating authority in following terms:

1. *To determine classification of Cold Rolled Stainless Steel strips in coil with indicated grade. While doing so, the adjudicating authority shall be mindful of various permitted processes under various heads as per borrowing chain of processes of Explanatory Notes, which are borrowing and further borrowing from various other heads of Chapter 72.*

2. *To determine whether discrepancy pointed out by the department in commercial invoices Vs Certificate of Origin has led to a mere procedural infraction or is something of substantive discrepancy, which deserves to deny concessional duty benefits, despite dealing with a trade promotional law, where liberal construction is warranted.*

3. *To determine differential duty and interest liability without invoking extended period.*

4. To determine role of Directors and other individuals involved in the matter a fresh in terms of our above observations with regard to imposition of penalty on them."

5.3 We also observe that in the instant case, the terms of remand in the matter of Gulshan Exim Pvt ltd (supra) are more relevant on the classification issue than the decision in the case of Shah Foils Pvt Ltd (supra), which was distinguished by us. Therefore, issue of classification can only be decided after looking into various aspects as were directed to be looked into in Gulshan Exim Pvt Ltd case. The form in which goods are imported i.e. coils or otherwise as well as various surface treatments etc., are also relevant factors for looking into the details of tariff headings. In that matter, we found that some portion of the demand was surviving otherwise also and was not hit by limitation and accordingly, interest and penal possibilities could not be ruled out, which is not the case in the present instance as whole of the duty demand is barred by limitation and therefore, demand will get extinguished in total and issue of classification will get reduced to academic interest only.

6. Regarding Second issue, on the point of undervaluation, we find that nothing by way of remittance of extra amount has been shown by the department and apart from the stated "Note" retrieved from the mobile phone of Shri Madhur Jain containing certain CIF rates has not been got authenticated from both sides by recording statement. Therefore, it does not meet the requirements of Section 138C of the Customs Act, 1962. Further, details of the goods mentioned in the note retrieved from the mobile do not match with the details in the B/Es in relation to specification and quantity. We find that even if a Mobile phone has to be treated as a computer printout, the following conditions as mentioned under Section 138C (2) are required to be fulfilled:-

"138C. [Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence. [Inserted by Act 29 of 1988, Section 6 (w.e.f. 1.7.1988).]

(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely:-

(a) the computer print out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether-

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,-

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,-

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.-For the purposes of this section,-

(a) "computer" means any device that receives, stores, and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]"

6.1 We find that there is nothing on record to show that the retrieved message reproduced from the seized Mobile phone was only being used by the appellant and it was not in usage of anyone else or that the same could be opened only after obtaining any password or keys from the importer, that the information of the nature relied upon was being regularly supplied to the mobile in an ordinary course of activities or that the mobile was operating correctly during the impugned period, or that if it is not operating properly, then the operation could not have affect on the documents. More importantly, in case of a mobile message, it is additionally required to indicate that there was no third party interference in the message and the message was passed down and intercepted without any interference by any third person in encryption, while passing of the message and it was exact replica of the message as was passed on the other hand. Similarly, we find that the conditions as listed above have also not been shown to be complied by. In view of the foregoing, we cannot allow acceptance of any message taken from the mobile without proper certification on all aspects and various clauses in Section 138C indicated above being statutory provision. Similarly, we also find that till the time the valuation was taken of the comparable goods in most respects, same cannot be taken to be based on contemporaneous imports of similarly classified goods. Further, we find that the goods in the case of Shah Foils Pvt Ltd and Vasko Steel P Ltd as have been exhibited chart above at page 7 were neither comparable nor similar goods as has been submitted by the appellants within Rule 2(f) of the Valuation Rules. The grades as well as dimensions taken and widths etc. were required to be the same and the commercial levels to be of the same level that the such contemporaneousness does not emanate from the record so as to indicate that the goods were similar or comparable. In view of the foregoing and also in the face of the facts that the classification of the goods as made out by either side need reconsideration, we find no reason on appreciating the evidence on record that the transaction value was/is rejectable, even at this stage.

6.2 In view of the foregoing, the department has not been able to discharge the burden of showing undervaluation in the matter. We are therefore inclined to accept the transaction value as has been indicated, due to lack of evidence for its rejection on the basis of record before us.

7. Regarding third issue, we also find that appellant had submitted various documents before Customs at the time of import. The period of imports was from November, 2019 to 15thNovember, 2022. The show cause notice has been issued invoking extended period on 21.11.2024. The whole case which department has sought to make in this show cause notice is on the basis of

Mill Test Certificate which was provided by the appellant himself. If that be so, it cannot even be alleged that there was any suppression of any kind by the appellant, and the basis of show cause notice was the Mill Test Certificate only. Therefore, even the extended period cannot be invoked against the appellant and at this stage even on merits, the classification made out by the appellants has also not been overruled. Again, as has been held by us even in the earlier decision in the case of Gulshan Exim Pvt Ltd (cited supra), the issue involves legal interpretation, which even at this stage cannot be decided on the basis on evidence as is on record. Party therefore can neither be subjected to suppression, mis-declaration with intent to evade payment of duty and neither to penalty or extended period.

8. In view of the foregoing, we are inclined to accept the appeals on limitation and valuation with consequential relief, even to the person penalised. The point of classification is left open to be decided in terms of our earlier order in Gulshan Exim Pvt Ltd (cited supra).

9. Appeals allowed.

(*Order Pronounced in the open court on 23.04.2026*)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha