CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70742 of 2025

(Arising out of Order-in-Original No.10/PC/NOIDA/CUSTOMS/2024-25 dated 25.03.2025 passed by Principal Commissioner of Customs, Noida)

M/s SSN Steel Impex, **.....Appellant**
(A-46, Basement, Wazirpur Industrial Area,
Wazirpur, New Delhi-110052)

VERSUS

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

APPEARANCE:

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

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

FINAL ORDER NO.70294/2026

DATE OF HEARING : 06.07.2026
DATE OF DECISION : 14.08.2026

K. ANPAZHAKAN:

The present appeal has been filed by M/s SSN Steel Impex, A-46, Basement, Wazirpur Industrial Area, Wazirpur, New Delhi-110052 (herein after referred as the Appellant), assailing the Order-in-Original No.10/PC/NOIDA/CUSTOMS/2024-25 dated 25.03.2025 passed by Principal Commissioner of Customs, Noida.

2. The Appellant. M/s SSN Steel Impex, a proprietary concern, is engaged in the import and trading of Stainless Steel products namely Stainless Steel Cold Rolled Sheets, Coils and Circles of various grades and trading thereof in DTA. During the period in question the said items, if imported from China attracted countervailing duty (CVD) under Notification No. 01/2017-

Customs (CVD) dated 07.09.2017 as amended vide Notification No. 5/2021 dated 30.09.2021 SS (CR) Coils imported from China also attracted Anti Dumping duty under Notification No. 61/2015-Cus (ADD) dated 11.12.2015 as amended from time to time. The SS(CR) Coils/Sheets imported from ASEAN Countries were totally exempted from payment of Customs duty under Notification No. 46/2011-Cus dated 01.06.2011 subject to the conditions prescribed under Notification No. 189/2009-Custom (NT) dated 31.12.2009.

2.1 Due to imposition of CVD and ADD, the imports from China was not financially viable, therefore, the Appellant explored possibility of imports from ASEAN countries. It has come to the notice of the Appellant that there were certain manufacturer-suppliers in Malaysia who could supply SS(CR) coils/sheets to the Appellant under preferential rate of duty under Notification No. 46/2011-Cus. Having satisfied that the conditions prescribed under Notification No. 189/2009-Customs (NT) including issue of Country of Origin Certificate (COO Certificate) by the Ministry of International trade and Industry of Malaysia (MITI) under prescribed format and origin criteria by way of Regional Value Content (RVC) 36.08%, would be satisfied, the Appellant started importing SS(CR) Coils/Sheets/Circles from the following suppliers:

(i) M/s Opulent Metals SDN BHD, Malaysia,

(ii) M/s Artfransi International SDN BHD, Malaysia and

(iii) M/s CEKAP Prima SDN BHD, Malaysia.

2.2 The overseas suppliers used to send COO duly issued by MITI along with other import documents on the basis of which B/E for clearance filed and thereafter goods were allowed to be cleared by the Customs officers of the Port, in DTA. Since the goods were cleared under preferential rate of duty (Nil duty), all the consignments were duly examined physically as well as with reference to country of origin (COO) certificates and other import documents presented by the Appellant through their CHA (Customs Broker).

2.3 On the basis of information received from MITI, Malaysia through e-mail that some importers including M/s Two Poles Recyclers (Prop. Shri Anil Mittal wife of cousin of Shri Anil Mittal were importing SS Coils from M/s Opulent Metals SDN BHD, Malaysia (Malaysian Company of Shri Piyush Mittal, Son of Shri Anil Mittal) by wrongly availing benefit of preferential rate of duty under Notification No. 46/2011-Cus dated 01.06.2011, the DRI (DZU) officers conducted searches godown /factory and residential premises of the above two firms. During investigation it came to the notice of the DRI that Appellant was also one of the Importers of SS (CR) Coils/ Circles from M/s Opulent Metals SND BHD, Malaysia and as such the officers initiated investigation against the Appellant by way of issuing summons.

2.4 The investigations culminated in the issuance of Show Cause Notice dated 27.03.2024 to the Appellant (among others) proposing denial of exemption benefit of preferential rate of duty on the consignments imported from Malaysia from M/s Opulent Metals, M/s EVG Metal Industries, M/s Artfransi International and M/s CEKAP Prima on the ground that the said manufacturer suppliers did not have manufacturing facility at the declared place of business and the COOs supplied to the Appellant were not genuine as they were not issued by the authorized agency MITI. In the Show Cause Notice it was also alleged that the goods were undervalued to evade payment of duty.

2.5 The Appellant filed a detailed reply to the Show Cause Notice. They also sought cross-examination of various persons whose statement have been relied upon against the Appellant. However, the Ld. Respondent without allowing cross-examination, proceeded to adjudicate the matter (Para 45 of Show Cause Notice refers) and passed the impugned Order-in-Original.

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

3. The Appellant submits that the impugned order has been passed contrary to the principles of natural justice inasmuch as no effective hearing was afforded to the Appellant before passing the Impugned order. The request for cross-examination of witnesses has been summarily rejected without any plausible reason. The Appellant submits that denial of cross-examination is contrary to the law laid down by the following case laws:

- Andaman Timber Industries v/s Commissioner of Central Excise, Kolkata-II-2015 (324) E.L.T. 641 (S.C.)
- Jindal Drugs Pvt. Ltd. v. Union of India 2016 (340) E.L.T. 67 (P & H)
- GK Enterprises, Delhi vs. Commissioner of Customs, Mundra Custom House Final Order No. 11549/2024 dated 12.07.2024 passed by Ahmedabad Bench of the Hon'ble Tribunal

3.1 The Appellant thus, submits that the impugned order has been passed without addressing to any of the submissions on merit made in the reply filed vide letter dated 16.09.2024.

3.2 The Appellant submits that the differential duty with interest and applicable penalty has already been paid in respect of the B/E No. 9382115 dated 30.10.2020. In this regard verification report (e-mail) dated 26.04.2021 received from MITI, Malaysia (Page 187 of Paper-Book) in the CBIC (FTA Cell) that COO No. KL-2020-AI-21-001652 Issued by M/s EVG Metal Industries (which was submitted by the Appellant with B/E No. 9382115 dated 30.10.2020) was not authentic. The consignment was initially cleared by Mundra Customs Authorities provisionally and on receipt of the aforesaid information from MITI, the Appellant had paid differential duty with interest and applicable penalty, the Bank Guarantee was released on 01.03.2023 and the matter was concluded. Hence, the Appellant submits that the demand of differential duty in respect of the consignment covered under B/E No. 9382115 dated 30.10.2020 is liable to be set aside otherwise confirmation of this part of the demand amounts to double jeopardy.

3.3 The Appellant submits that the Ld. Respondent has failed to appreciate that in the same email dated 26.04.2021 received by the department from MITI, it has been clearly mentioned that following four COOs were authentic and were duly issued by MITI:

(i) KL-2020-AI-21-009999

(ii) KL-2020-AI-21-009937

(iii) KL-2020-AI-21-009915

(iv) KL-2020-AI-21-009958

3.4 One of the aforesaid COOs, the one bearing No. KL-2020-AI-21-009937 pertains to the consignment of CR Stainless Steel Coils J-3 Grade covered under B/E No. 9280868 dated 22.10.2020 which was imported by the Appellant from M/s Opulent Metals SDN BHD. This clearly establishes that the allegation of the department that all the COOs presented by the Appellant to the Customs were unauthentic as the Malaysian suppliers did not have facility to undertake process or did not undertake any process on the goods to qualify origin criteria, is absolutely baseless. It is pertinent to mention that the demand in respect of this consignment has also been confirmed in the impugned order. (S. No. 10 of Annexure SSN-2 to Show Cause Notice).

3.5 The Appellant submits that Notification No. 46/2011-Cus dated 01.06.2011 issued under ASEAN-India Free Trade Agreement stipulates that the goods imported into India from ASEAN countries are exempted from the Customs duty to the extent mentioned in the said notification subject to fulfillment of conditions mentioned therein and the Rules of Origin. One of such conditions is that the supplier of the originating country would obtain COO certificate from the concerned Ministry of that country and supply the original copy thereof to the importer in India. The importer would produce such certificate along with other import documents to the Indian Customs at the time of filing B/E for clearance of the consignment so imported by him from the ASEAN country. The B/E and other relevant import documents including COO so filed by the importer are invariably subject to verification by the Customs officers at the port of import. In the case of imports made by the Appellant, the Malaysian suppliers provided original copy of COO(s) in respect of all import consignments to the Appellant in the prescribed format duly certified by the competent authority of MITI, Malaysia as apparent from the COO Certificates, which bear rubber stamp and signature of the competent authority in all cases. The Appellant duly submitted original copy of COOs to the Indian Customs at the port of import along with respective Bs/E and other Import documents such as invoice, packing list, B/L etc.

3.6 The Appellant submits that the department has relied upon some partially filled in and unsigned COO forms, which were found in the mail/ mobile chats allegedly sent to Sh. Piyush Mittal, one of the Director of M/s Opulent Metal, SDN BHD, and inferred that all COOs were unauthentic. These documents were retrieved from the electronic gadgets of Sh. Piyush Mittal, therefore, the Appellant cannot comment on such documents. However, the Appellant submits that the procedure prescribed for retrieval of documents from electronic items under Section 138C of the Customs Act, 1962 has not been followed in this case and hence such documents cannot be relied upon to fasten guilt on the part of the Appellant. Otherwise also, it is not the case of the department that particular COO forms found in mail / mobile chats are those which pertain to the consignment(s) imported by the Appellant or MITI has specifically informed the Department of Custom that those specific COOs were unauthentic.

3.7 The Appellant submits that the demand of Customs duty against finally assessed Bs/E and in some cases even the duty was reassessed, cannot be issued by the department without challenging the assessment order contained in such Bs/E as held by the Hon'ble Supreme Court in the case of Priya Blue Industries Ltd. vs. Commissioner of Customs (Preventive) - 2004(172) ELT 145 (SC), Collector vs. Flock (India) Pvt. Ltd. 2000 (120) ELT 285 (SC) and ITC Ltd. vs. Commissioner of Central Excise, Kolkata-IV-2019(368) ELT 216 (SC) wherein Hon'ble Supreme Court while upholding the judgments in the case of Priya Blue Industries Ltd. and Flock (India) Pvt. Ltd. has held that assessment in a B/E includes self-assessment and that has to be challenged in appeal.

3.8 The Appellant submits that before placing order for supply of goods, they have ensured from the representative of the overseas supplier that the supplier located at the given address; that they were duly registered with MITI so that they could supply the goods of Malaysian origin in terms of Notification No. 46/2011-Cus dated 01.06.2011. The Appellant submits that in majority of cases of import, the consignments were duly examined and in all cases the import documents including COO Certificate, were duly verified by the Customs officers before allowing clearance for home consumption. It has not been considered that the conditions of the aforesaid notification cannot be stated to be violated when MITI reported the COO Certificates other than 87 COOs to be genuine/authentic and no evidence brought on record by the DRI that the COOs other than the only one supplied by M/s EVG Metal Industries, are not authentic.

3.9 The Appellant submits that there is no evidence that all the Malaysian suppliers are either not registered with MITI or did not meet the conditions of Wholly Obtained' or in case non-originating goods, not less than 35% Regional Value Content (RVC) in the exporting country. The allegations, therefore, are baseless and bereft of any documentary evidence. Based on the statements of the Appellant and other persons that they had admitted that so called admission in the statements is contrary to the facts as well as the same remain uncorroborated with other evidence. It is the submission of the Appellant that no effort has been made by the investigation to bring on record any evidence documentary or otherwise in support of the allegations that the goods imported by the Appellant from Malaysia were neither wholly obtained nor met the condition of value addition (RVC) and therefore, not eligible for preferential treatment. Since there was no such evidence available, the DRI had no option but to coerce and pressurize the Appellant and other persons to record statements to suit their convenience and in support the allegation. It is trite law that serious allegations like mis-declaration, suppression of facts and smuggling of goods need to be corroborated by independent, positive and concrete evidence in addition to statement(s) of the importer.

3.10 The Appellant submits that the consignments in question were imported by them much before the issue of e-mail dated 14.04.2021 and 26.04.2021 (Pg. No. 187 to 192) by MITI received by the Government of India. In other words at the time of import of goods and initiation of investigation proceedings against the Appellant, the allegation of unauthentic COO Certificates was not in existence and apparently the department was also not aware of the same at that point of time. It is on record that after receipt of the aforesaid e-mails, except for recording statements, the DRI did not conduct any investigation in the matter. Therefore, the allegation that the COO Certificates submitted by the Appellant to the Customs are not authentic, is not sustainable and hence the demand based on denial of exemption under Notification No. 46/2011-Cus is liable to be set aside.

3.11 The Appellant relies on the Final Order No. 11549/2024 dated 12.07.2024 passed by the Ahmedabad Bench of the Tribunal in an identical case in the matter of GK Enterprises vs. Commissioner of Customs, Mundra Customs as well as

Commissioner of Customs (Imports), Mumbai Versus M/s Ganpati Overseas Through Its Proprietor Shri Yashpal Sharma & Anr. reported in 2023 (10) TMI 364-Supreme Court.

3.12 Regarding quantification of differential duty, the Appellant submits that CVD levied @18.95% vide Notification No. 1/2017-Cus(CVD) dated 07.09.2017 was withdrawn for the period 02.02.2021 to 30.09.2021 vide Notifications dated 01.02.2021 and 30.09.2021 (Pg. No. 126130 of Paper-Book), therefore, confirmation of CVD amounting to Rs. 65,65,735/- in respect of six Bs/E filed in respect of consignments imported from China during the said period (Table appended to Para-P at Pg. 32 of appeal) is liable to be set aside.

4. Regarding the allegation of undervaluation, the Appellant submits that the confirmation of demand on the ground of alleged undervaluation pertains to (i) goods imported from China, and (ii) goods imported from Malaysia. In respect of goods imported from China, the Ld. Respondent has relied on the statements of Sh. Piyush Mittal of Opulent Metals, Malaysia and Sh. Anil Mittal of M/s Two Poles Recyclers, Delhi wherein they allegedly admitted the actual transaction value of CR Stainless Steel Coils imported from Chinese Supplier M/s Hong Yue Stainless Steel Ltd. with reference to imports made by M/s Two Pole Recyclers and that M/s Opulent Metals, Malaysia had also imported same goods from M/s Shandong Mengyin Huarum Imp. and Exp. Co. Ltd., China. In this regard, the Appellant submits that there is no allegation that the goods imported by the Appellant were identical or similar in terms of quality, quantity and specifications to the goods imported by M/s Two Poles Recyclers, Delhi. Therefore, the allegation of undervaluation in respect of consignments of CR Stainless Steel Coils/ sheets imported by the Appellant from China cannot be sustained. Without prejudice, it may be mentioned herein that the Appellant had imported only five consignments directly from M/s Shandong Mengyin Huarum Imp. and Exp. Co. Ltd., China. Therefore, allegation of undervaluation in respect of all the

consignments imported by the Appellant from China is not sustainable.

4.1 In respect of CR Stainless Steel Coils/Circles imported from Malaysia it has been alleged that M/s Opulent Metals, Malaysia had imported goods from M/s Hong Yue Stainless Steel Ltd. at a higher price than the consignments and therefore, the price of goods imported by the Appellant from Malaysia cannot be less than the price of goods imported in Malaysia. In this regard it is submitted that the goods were imported by the Appellant from Malaysia claiming exemption under notification issued under Preferential Trade Agreement (ASEAN) at nil rate of duty, therefore, there was no reason for them to undervalue the goods. Further, it is not the case of the department that M/s Opulent Metals, Malaysia had supplied consignments manufactured only out of the goods imported from M/s Hong Yue Stainless Steel Ltd. Moreover, apart from the supplies made by M/s Opulent Metals, Malaysia, the Appellant also imported consignments from M/s EVG Metal Industries and M/s CEKAP Prima and it is not in the allegation that they had also imported identical or similar goods from the same supplier M/s Hong Yue Stainless Steel Ltd.

4.2 The Appellant submits that Rule 9(2) of Customs Valuation (DPIG) Rules, 2007 specifically bars determination of value on the basis of price of goods for the export to a country other than India and arbitrary & fictitious value. Thus, the Appellant submits that rejection of transaction value is not sustainable as there is no material to cast doubt on the commercial nature of transaction and the value reflected in respective import invoices.In support of this contention, the Appellant relied on the decision in the case of Garg Diesel's as reported in 2007(208) ELT 97 (Tri. Delhi)].

4.3 The Appellant submits that the imports in question are ordinary transactions in the course of trade between the parties at arm's length and do not fall under any of the exceptions stipulated in Rule 3(2) of the Customs Act, 1962. The findings of the learned Respondent rejecting declared transaction value and enhancement thereof in this case is contrary to the ratio of judgment of the Hon'ble Supreme court in the case of Eicher Tractor Ltd. vs. Commissioner of Customs, Mumbai as reported in 2000(122) ELT 321 (SC), which is equally applicable to the new valuation rules as new rules are pari materia to the provisions of old rules. The Appellant also relies on the decision of Hon'ble Supreme Court in the case of Commissioner of Customs, Calcutta vs. South India Television P. Ltd. as reported in 2007(7) TMI 9-Supreme Court.

4.4 It is the submission of the Appellant that loading of value in this case is contrary to the mandate of Rule 9 of the Customs Valuation Rules, 2007 as the findings of the learned Respondent in this regard is contrary to the various restrictions provided under sub-rule (1) and clause (i) to (vii) of sub-rule (2). It is not the case of the department that the Appellant had paid any amount over and above the declared invoice price. It is submitted that imports were made by the Appellant in accordance with the standard international business practice.

4.5 Without prejudice, it is submitted that even if it is presumed that there was under valuation, the case of under valuation should be restricted only in respect of the consignments in respect of which the documents have been brought on record by the investigation. It is trite law that such allegation cannot be applied to other imports in respect of which there is no documentary evidence available on record.

4.6 In view of the submissions above, the Appellant submits that the goods are not liable to confiscation under Section 111(m), 111(0) or 111(q) of the Customs Act, 1962, and therefore, the impugned order to that extent is not sustainable.

4.7 The Appellant submits that at the time of filing B/E, they were not aware of the fact of the authenticity, if any, of the COO being filed by them. They have filed the COOs as received from the overseas suppliers. Moreover, in view of the facts stated above, there is no evidence brought on record showing mens rea on the part of the Appellant. Therefore, no penalty is imposable on the Appellant under Section 114A of the Customs Act, 1962, more so when the demand itself is liable to be set aside as stated above.

4.8 It is on record that the Appellant had filed COO with the Customs as received from the overseas supplier and at the time of submission of COO neither the Appellant nor the department knew that the same was authentic or not. It is only when the report was received from MITI, Malaysia, the department came to know that some of the COOs were not authentic. Such report from MITI was received by the department much after the imports made by the Appellant. There is no allegation much less evidence that the Appellant had forged the COO Certificates or knowingly submitted any document which were not valid or authentic with an intent to evade payment of duty. Therefore, no penalty is imposable on the Appellant under Section 114AA of the Customs Act. 1962 and, as such, penalty imposed by the learned Respondent under that section is liable to be set aside.

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

6. The learned Authorized Representative for the Revenue reiterated the findings recorded in the impugned order. He submits that the Show Cause Notices have been issued on the basis of evidence gathered by the Department and the statements recorded from the proprietor of the Appellant company. The Learned Authorized Representative submits that the proprietor in his statement categorically admitted that goods have been imported from China and supplied from Malaysia. He also submits that additional money payable to the foreign supplier has been passed through hawala transactions. Accordingly, the learned Authorized Representative submits that

differential customs duty confirmed in the impugned order along with interest and penalty are legally sustainable.

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

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

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

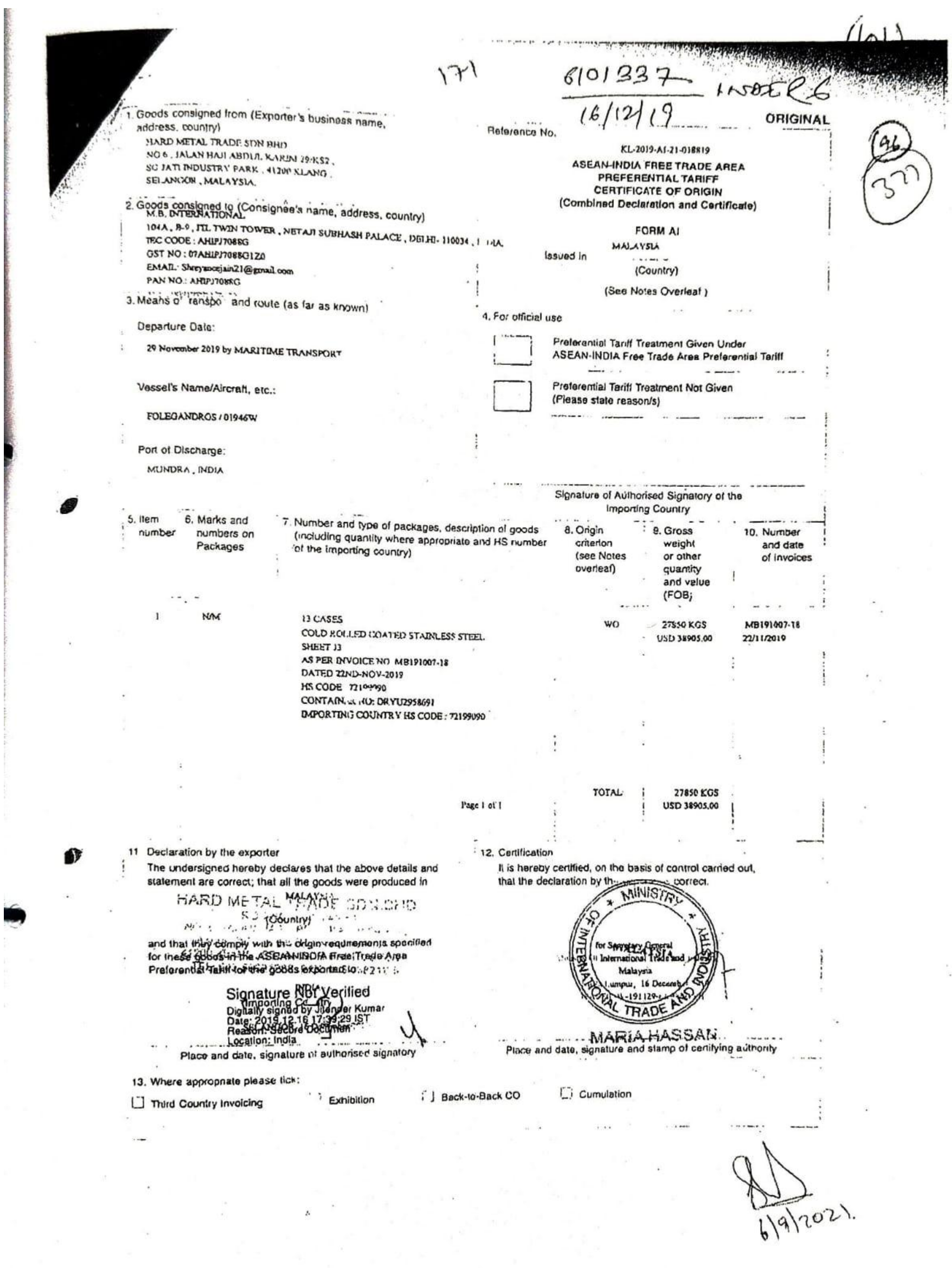
b) As the COO Certificates are unauthentic, the Appellant would not be eligible for the benefit of exemption as provided under the Notification No.46/2011-Cus dated 01.06.2011

c) Undervaluation of goods imported by the Appellant.

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

9.1 Regarding the issue of genuineness of the COOs submitted by the Appellant, we find that the goods were examined by the proper officer of customs and the assessment was completed on the basis of the documents including the COOs submitted by the Appellant. The said goods were released by the Department after the assessment and after proper verification of Certificates of Origins by the Assessing Officer. The said assessments have not been challenged and hence attained finality. The Appellant has cleared the goods after assessment and no objection was raised prior to their clearance.

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



171 6101337 16/12/19

ORIGINAL

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

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

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

FORM AI

Issued in MALAYSIA (Country)

(See Notes Overleaf)

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

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

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

Signature of Authorised Signatory of the Importing Country

5. Item number	6. Marks and numbers on Packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)	8. Origin criterion (see Notes overleaf)	9. Gross weight or other quantity and value (FOB)	10. Number and date of invoices
1	N/M	13 CASES COLD ROLLED COATED STAINLESS STEEL SHEET 13 AS PER INVOICE NO MB191007-18 DATED 22ND-NOV-2019 HS CODE 721[illegible]90 CONTAINER NO: DRYU2958691 IMPORTING COUNTRY HS CODE : 72199090	WO	27850 KGS USD 38905.00	MB191007-18 22/11/2019
		Page 1 of 1	TOTAL	27850 KGS USD 38905.00	

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

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

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

6/9/2021.

9.3. From the letter reproduced above, we find that the letter contains an annexure containing a list of 87 certificates which were found to be unauthentic by MITI. We find that the investigation against the Appellant was initiated on the basis of communications (exchange of e-mails) between MITI and Government of India wherein a list of 143 COOs were sent for verification. After verification, the report received from MITI vide e-mail dated 14.04.2021 revealed that based on their assessment out of the 143 COOs, 87 were not authentic and they were not issued by the MITI. We have perused the list of 87 COOs found to be unauthentic by the MITI authorities. We also find that the Appellant submitted a list of 38 COOs which were submitted by them along with the respective bills of entry. For ready reference the details of the 38 COOs are extracted below:-

Sr.No.	**BE.No. & date**	**Item description**	**CONSIGNER**	**COO Issuing auth**	**Form 'A' COO Certificate No.**
1	4874981 dt.12/09/2019	Cold Rolled Stainless Steel Circle	ARTFRANSI INTERNATIONAL SDN BHD	MITI, MALAYSIA	KL-2019-AI-Z1-010634
2	6044619 dt.12/12/2019	Cold Rolled Stainless Steel Circle	ARTFRANSI INTERNATIONAL SDN BHD	MITI, MALAYSIA	KL-2019-AI-21-010991
3	6064794 dt.13/12/2019	Cold Rolled Stainless Steel Circle	ARTFRANSI INTERNATIONAL SDN BHD	MITI, MALAYSIA	KL-2019-AI-21-0101021
4	6815635 dt.10/02/2020	Cold Rolled Stainless Steel Circle	CEKAP PRIMA SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-005872
5	7112008 dt.04/03/2020	Cold Rolled Stainless Steel Circle	ARTFRANSI INTERNATIONAL SDN BHD	MITI, MALAYSIA	KL-2019-AI-21-0101285
6	7240194 dt.14/03/2020	Cold Rolled Stainless Steel Circle	ARTFRANSI INTERNATIONAL SDN BHD	MITI, MALAYSIA	KL-2019-AI-21-0101339
7	8605419 dt. 27/08/2020	Cold Rolled Stainless Steel Coils	OPULENT METALS SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-007584
8	8470174 DT.14/08/2020	Cold Rolled Stainless Steel Coils	OPULENT METALS SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-007195
9	8470412 dt.14/08/2020	Cold Rolled Stainless Steel Coils	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-001539
10	8708383 dt. 5/9/2020	Cold Rolled Stainless Steel Coils	OPULENT METALS SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-008035
11	8708513 dt. 5/9/2020	Cold Rolled Stainless Steel Coils	OPULENT METALS SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-007864
12	8915995 dt. 23/09/2020	Cold Rolled Stainless Steel Coils	OPULENT METALS SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-008645
13	8870631 dt. 19/09/2020	Cold Rolled Stainless Steel Coils	OPULENT METALS SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-008713
14	8873005 19/09/2020	Cold Rolled Stainless Steel Coils	OPULENT METALS SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-008710

15	9011960 dt. 30/09/2020	Cold Rolled Stainless Steel Coils	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-001622
16	9382115 dt. 30/10/2020	Cold Rolled Stainless Steel Coils	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-001652
17	9280868 dt. 22/10/2020	Cold Rolled Stainless Steel Coils	OPULENT METALS SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-009937
18	9280866 dt. 22/10/20	Cold Rolled Stainless Steel Coils	OPULENT METALS SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-009919
19	9411899 dt. 2/11/2020	Cold Rolled Stainless Steel Coils	CEKAP PRIMA SDN BHD.	MITI, MALAYSIA	KL-2020-AI-21-042895
20	9411843 dt. 2/11/2020	Cold Rolled Stainless Steel Coils	CEKAP PRIMA SDN BHD.	MITI, MALAYSIA	KL-2020-AI-21-042950
21	9633594 dt. 20.11.2020	Stainless Steel Coils	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-001730
22	9877991 dt. 08.12.2020	Stainless Steel Coils	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-001799
23	9877994 dt. 08.12.2020	Stainless Steel Coils	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-001776
24	9812934 dt. 03.12.2020	Stainless Steel Circle	CEKAP PRIMA SDN BHD.	MITI, MALAYSIA	KL-2020-AI-21-041013
25	9813086 dt. 03.12.2020	Stainless Steel Circle	CEKAP PRIMA SDN BHD.	MITI, MALAYSIA	KL-2020-AI-21-041017
26	2087846 dt. 23.12.2020	Stainless Steel Coils	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-001845
27	2087837 dt. 23.12.2020	Stainless Steel Coils	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-001854
28	2122536 dt. 27.12.2020	Stainless Steel Coils	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2020-AI-21-001873
29	2026982 dt. 19.12.2020	Stainless Steel Circle	CEKAP PRIMA SDN BHD.	MITI, MALAYSIA	KL-2020-AI-21-046285
30	2618581 dt. 04.02.2021	Stainless Steel Circle	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2021-AI-21-004801
31	2618003 dt. 04.02.2021	Stainless Steel Circle	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2021-AI-21-004789
32	2615472 dt. 04.02.2021	Stainless Steel Coils	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2021-AI-21-004795
33	2808595 dt. 17.02.2021	Stainless Steel Coils	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2021-AI-21-004843
34	2808594 dt.	Stainless Steel Coils	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2021-AI-21-004849

	17.02.2021				
35	2618606 dt. 04.02.2021	Stainless Steel Circle	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2021-AI-21-004824
36	2929718 dt. 26.02.2021	Stainless Steel Coils	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2021-AI-21-004847
37	2678469 dt. 08.02.2021	Stainless Steel Coils	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2021-AI-21-004840
38	2898026 dt. 24.02.2021	Stainless Steel Coils	EVG METAL INDUSTRIES SDN BHD	MITI, MALAYSIA	KL-2021-AI-21-004862
20	9411843 dt. 2/11/2020	Cold Rolled Stainless Steel Coils	CEKAP PRIMA SDN BHD.	MITI, MALAYSIA	KL-2020-AI-21-042950

9.4 We find that out of the 38 imports and the corresponding COOs mentioned above, only one COO bearing No. KL-2020-AI-21-001652 submitted by the Appellant along with the B/E No. 9382115 dated 30.10.2020 is found in the list of unauthentic COOs mentioned in the email received by the department from MITI, Malaysia.It is submitted that the Appellant had already deposited the differential dutyin respect of this unauthentic COO by foregoing the concessional rate of duty as mentioned in the chart (S. No. 3) (already enclosed with the appeal.)

9.5 Thus, we observe that only one of the 38 COOs submitted by the Appellant along eith the Bills of Entry filed by them are figuring in the list of 87 unauthenticated COOs available in the letter/email dated: 14.04.2021 Thus, we find that all the remaining 37 COOs submitted by the Appellant were found to be authentic, as they are not figuring in the letter/email dated: 14.04.2021. Accordingly, we hold that the Appellant is elgible for the benefit of consesstional rate of duty as provided under Notification 46,/2011-Cus dated 01.06.2011 for all the remaining 37 COOs. Accordingly, we hold that the Appellant is liable to pay duty only in respect of one COO which is found to be unauthenticated. In repect of the one COO supplied by M/s EVG Metal Industries, which was not found to be authentic, the Appellant has already foregone the concessional duty benefit and paid the duty without availing the benefir of exemption as provided under Notification 46,/2011-Cus dated 01.06.2011. Thus, we find that no other differential customs duty is payable by the Appellant.

9.6 In the said the letter/email dated: 14.04.2021 received from MITI, it has also been mentioned that MITI had never received any COO applications from the respective companies. We find that the department has interpreted the letter that none of the COOs submitted by the Appellant for the imports made from the supplier were authentic. We find that this interpretation of the department is not supported by any evidence. When MITI authorities has verified and informed that some of the COO were found to be unauthentic, the said report should be made applicable only in respect of that COO submitted by the Appellant. When there is no finding regarding the genuineness of the other COOs submitted by the Appellant, it cannot be presumed that all other COOs submitted by the Appellant in respect of the import from the said suppliers were not authentic. It is a fact on record that the issuing authority has not cancelled any of the COOs submitted by the Appellant in respect of the imports made from **ARTFRANSI INTERNATIONAL SDN BHD, CEKAP PRIMA SDN BHD, M/s Opulent Metals, Malaysia** or any other supplier from whom the Appellant has made imports. Thus, we hold that all 37 COOs submitted by the Appellant cannot be rejected as unauthentic. Once the COOs are found to be not fake, the Appellant would be eligible for the benefit of Notification No.46/2011-Cus dated 01.06.2011.

9.7 Regarding the 37 COOs submitted by the Appellant along with the respective Bills of Entry, we find that as on the date of import, the Certificate of Origin meets the requirement, with the Overseas Exporter giving the declaration and the same being authenticated by the Authorized Officials of the Malaysian Government. Their Signatures have been verified by the Customs officials and only after this, the consignments have been allowed to be imported under concessional rate of duty, by the Proper officer. Thus, we find that the requirements under the Notification have been met on the date of import. The same cannot be negated by a subsequent communication received from Malaysia after more than 2 years, without coming out with the details of the contravention and action being taken by them. We find that none of certificates was cancelled or revoked by the Govt of Malaysia. In such a case, no claim can be made on an importer who relied upon the certificates issued by the Authorized Officials of the exporting country. There is nothing to indicate that the appellant has in any way colluded with the alleged irregularity pointed by the Govt of Malaysia, after 2 years of issue of the Certificates of Origin.

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

> "8.6. We also observe that there is no document of revocation of the four certificates either addressed to the exporter or the importer. to whom it would have been issued had it been actually issued or had it been part of a formal communication. There is no authenticity of certification by any Authority of Thailand for attestation as held by the Honourable Supreme Court in the case of Collector of Customs, Bombay versus East Punjab Traders reported in 1997 (89) E.L.T. 11 (S.C.).
>
> 8.7. We observe that apart from the three letters, there is no material in the Show Cause Notice, suggesting revocation of the certificate of origin or making of retroactive check also. Thus, we find that there is also no document enclosed in the notice issued by any designated authority of India in this regard. We are of the view that the retroactive check is to be accompanied by certificate of origin and the reasons as to why retroactive check is requested are to be specified. However, we find that there is no such document available in this case.

> 8.8. It is also settled law that the if certificates at the time of import were valid, then their validity cannot be questioned on the basis of surmises. In this case, the evidences submitted by the investigation does not conclusively prove that the COOs submitted by the appellant were not genuine. On the contrary, the evidences submitted by the appellant indicate that the COOs submitted by the appellant are indeed genuine. Accordingly, we hold that the appellant had rightly availed the benefit of Notification No. 46/2011-Cus. dated 01.06.2011 on 16 Bills of Entry by presenting 16 country of origin certificates. Consequently, we hold that the impugned order passed by rejecting the benefit of the said notification is not sustainable."

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

9.10 From the documents available on record, we find that the Appellant has imported goods from various suppliers from Malaysia. However, from the List of 87 Certificates enclosed in the letter submitted by MITI, which were found to be unauthentic, there are no unauthntic COO pertains to the imports made by the Appellant. Thus, we find that the certificate submitted by the Appellant for import from all of their suppliers cannot be held unauthentic. Accordingly, we hold that there is no merit in denying the benefit of Notification No.46/2011-Cus in respect of the imports covered by the Country of Origin Certificate submitted by the Appellant in respect of the imports from other suppliers. Thus, we hold that the Appellant is eligible for the benefit of exemption as provided under the Notification No.46/2011-Cus dated 01.06.2011, in respect of all the 37 COOs submitted by them.

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

11. Regarding the penalties imposed on the Appellant, we find that the penalties have been imposed on the allegation of mis-declaration of COO and undervaluation of the impugned goods by the Appellant. In view of the findings in the preceding paras, it has been held that the allegations of mis-declaration of COOs

and undervaluation of the impugned goods are not sustained. Thus, we hold that suppression of facts with intention to evade the tax has not been established in this case. Accordingly, we hold that no penalty imposable on the Appellants herein and hence we set aside the same.

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

(i) We hold that all the 37 Country of Origin Certificates submitted by the Appellant to the Customs authorities are authentic and acceptable.

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

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

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

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

(Pronounced in open court on 14.08.2026)

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

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

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