



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE: MUNDRA, KUTCH
MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62

A	File No.	VIII/48-19/Adj/ADC/MCH/2017-18
B	Order-in-Original No.	MCH/ADC/PSK/84/2018-19
C	Passed by	Shri Prashant Kaduskar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of Order	26.12.2018
E	Date of Issue	31.12.2018
F	SCN NO. & Date	F. No. S/43-31/SIIB/INV/CHM/2015-16 dated 10.07.2017
G	Noticee / Party / Importer / Exporter	(i) M/s Zhongtu India Pvt. Ltd., Rz-C-104, Mahavir Nagar, Near Dwarka Secor-1, Police Post, Dwarka, New delhi-110045 NOW: M/s. Allfine Industries Pvt. Ltd., 120/6 and 121/10/2, Situated near Azad Factory, Mundka, New Delhi – 110 041 (ii) Shri Sandeep Kumar, Sec-18 A, Kargil Vijay Veer Aawas, Flat No.-254, Dwarka, New Delhi-110075. NOW: C/o M/s. Allfine Industries Pvt. Ltd., 120/6 and 121/10/2, Situated near Azad Factory, Mundka, New Delhi – 110 041

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“ सीमा शुल्क आयुक्त (अपील), कांडला
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Subject :- SCN F. No. S/43-31/SIIB/INV/CHM/2015-16 dated 10.07.2017 issued to M/s. Zhongtu India Pvt. Ltd., Rz-C-104, Mahavir Nagar, Near Dwarka Secor-1, Police Post, Dwarka, New delhi-110045 & Shri Sandeep Kumar, Sec-18 A, Kargil Vijay Veer Aawas, Flat No-254, Dwarka, New Delhi-110075.

Brief facts of the case

An Information was received by SIIB, Customs House, Mundra from Anti Evasion Unit, Central Excise, Noida-II regarding Import of "Mild Steel Galvanized Pre-painted/Color Coated Sheets/Coils" by mis-declaring the said goods as "M.S. Low carbon/M.S. Prime Pre-painted/Color Coated Sheets/Coils" in order to evade customs duty by undervaluing the goods by M/s. Zhongtu India Pvt. Ltd.(IEC-0513081445) (Now, M/s. Allfine Industries Pvt. Ltd.) having address as RZC-104, Mahavir Vihar, Sec-1, Police Post, Dwarka, New Delhi - 110045 (hereinafter referred as 'the importer').

1.2 Accordingly, live bills of entry N33250413, 3250397, 3250548, 3250573 all dated 16.11.2015 filed by the importer through Custom Broker M/s Rajasthan Container Services were intercepted by SIIB for detailed examination/investigation. The goods were declared as 'M.S. Prime Color Coated Sheet in Coils'. During the course of examination, it appeared that the goods were Galvanized Steel Coils. Further, PMI Tests of the said imported goods were conducted result of which was as under:

- (i) Titanium - 3.55% -4.69% (with colour coated);
- (ii) Zinc - 6.04 % - 14.08% (after scratching/removing the colour);
- (iii) Iron - 80.98% - 89.56 % (with coating) & 99.06% - 99.72% (without coating).

1.3 In view of the above, it was clear that the imported goods are iron sheets, coated with Zinc as well as Colour, and hence, the imported goods were "M.S. Pre-painted Galvanized/Galvalume Sheets". Further, as per Mill Test Certificate dated 28.10.2015 issued by the supplier M/s TAIZHOU CITY ZHONGTU IMP. AND EXP. CO. LTD, the imported goods were described as "MS PRIME COLOR COATED SHEET IN COIL", however, the grade of the goods in the MTC was declared as "JISG3312" and basic material was declared as "CGCC". As per the details available on internet, JISG3312"stands for Japan Industrial standards. Its base metal is cold rolled steel and CGCC stands for "Soft forming quality hot dip galvanized steel". As per mill test certificate, goods were pre-painted steel coils with Zinc coating of 30-40 GSM.

1.4 In view of the above discrepancy, Summons was issued to the director of the importer. Shri Sandeep Kumar, Director of the importer appeared before SIIB and his statement was recorded on 11.12.2015 under section 108 of the Customs Act, 1962, wherein he, *inter alia*, tendered that:-

- (i) The company was importing M. S. Prime pre-painted steel Coils;
- (ii) He was the person who looked after works related with operations, sales and overall management in company.

- (iii) they imported M. S. Prime Colour Coated Sheet in Coils from M/s Taizhou city Zhongtu Import & Export Co, China under the Bills of Entry No. 3250413, 3250397, 3250548 and 3250573 all dtd. 16.11.2015;
- (iv) The overseas supplier, in the said Bills of Entry, was a trader. The company came to know about the said supplier through local market. For the present consignment they first checked the price of goods with other suppliers in china and then they checked with their regular supplier Taizhou City Zhongtu Imp. &Exp Co. Ltd. for item M.S. Prime Colour Coated Steel. They quoted the price of 460 US\$ to 470US\$ per MT. They accepted the price quoted by supplier and placed purchase order for 391.2 MT.
- (v) They got proforma invoice on their email id – s.bassi@tzzhongtu.com confirmed deal. He knew, M.S. galvanised colour coated steel coils means the steel sheets coils which are coated with zinc/allu+zinc.
- (vi) He agreed with the Gun test report. As per the gun test report, the imported item is M.S. Hot Dip Zinc Coated prime steel sheets and coils. The grade of the imported steel is JISG3312, hence, he also agreed that the imported item is M. S. Prime Pre-painted Galvanized/Galvalume Sheets in Coils.
- (vii) He also agreed that the prices of M. S. Pre-painted Galvanized Steel Sheets in Coils is higher than the M. S. Prime Colour Coated Steel Sheets in Coils;
- (viii) He accepted that on examination, the goods were found as – Hot Dip galvanized colour coated steel sheets. M.S. Pre-painted Galvanized/Galvalume Steel Sheets in Coils’. Henceforth, he also agreed to enhance the value of the item as per Custom Assessment Practice.

1.5 The importer, in import documents declared the item-“M. S. Prime Color Coated Sheet in Coils”. But on examination, the goods were found-“M. S. Prime Galvalume Pre-painted Sheet in Coils”. In the MTC, the goods were declared as-“MS Prime Color Coated Sheet in Coil”. Hence, it is apparent that the importer has not declared the item as **‘Galvalume Pre-painted Steel’** in the import documents – Import Invoice, Bill of Lading, Packing List, MTC etc.

1.6 However, the Mill Test Certificate dated 02.06.2015 issued by M/s Hangzhou Kaida Color Steel Co. Ltd reflects the Grade of the steel as – “JISG3312” and basic material was – “**SGCC**” and “**CGCC**”. CGCC steel is a steel grade of **Pre-painted steel coil** (PPGI) which is made by cold rolled steel sheet and galvanized steel sheets as baseplate, through the surface pretreatment (degreasing, cleaning, chemical conversion processing), coated by

the method of continuous coatings (roller coating method), and after roasting and cooling. SGCC steel is a soft forming quality hot dip galvanized steel. SGCC is a material grade and designation defined in JISG 3312 standard. JISG3312 is a Japanese material standard for hot dip galvanized steels. SGCC stands for Hot Dip galvanized steel sheet.

1.7 The importer had suppressed the fact-'**Galvalume**' in the import documents. The process '**Galvalume**' affects the import price of goods. Hence, it appeared that the importer, in order to undervalue their imported goods, mis-declared the goods and which resulted evasion of customs duty.

1.8 It is also noticed from Technical Manual of Pre-painted Steel Sheets of M/s BAOSTEEL, a worldwide company, that the items - "Pre-painted Steel Sheets" and "Pre-painted Galvanized Steel Sheets/ Pre-painted Galvalume Steel Sheets" are different items and processing and contents of these items are also different. The relevant portion of the Technical Manual of Pre-painted Steel Sheets of M/s BAOSTEEL is as under:-

1.8.1 Brief introduction

"Pre-painted steel sheet is coated with organic layer, which provides higher anti-corrosion property and a longer life span than that of galvanized steel sheets. The base metals for Pre-painted steel sheet consist of cold rolled, HDG electro-galvanized and hot-dip alu-zinc coated. The finish coats of pre-painted steel sheets can be classified in to groups as follows: polyester, silicon modified polyesters, polyvinylidene fluoride, high-durability polyester, etc. The production process has evolved from one-coating-and one-baking to double-coating-and-double-baking, and even three-coating-and-three-baking. The color of the pre-painted steel sheet has a very wide selection, like orange, cream-colored, dark sky blue, sea blue, bright red, brick red, ivory white, porcelain blue, etc. The Pre-painted steel sheets can also be classified into groups by their surface textures, namely regular pre-painted sheets, embossed sheets and printed sheets. The pre-painted steel sheets are mainly provided for various commercial purposes covering architectural construction, electrical household appliances, transportation, etc.

1.8.2 The base metals for pre-painted steel sheet

The base metals for pre-painted steel sheet consist of cold rolled, HDG electro-galvanized and hot-dip alu-zinc coated steel sheet.

1.8.3. a. Cold-rolled base metal

The pre-painted steel sheet processed with cold-rolled base metal features in its smooth and beautiful appearance and the machinability of cold rolled

steel sheet, however, in case of any tiny scratch on the top coating may expose the cold rolled base metal in the air and the exposed base metal may rust soon. Thus, the products of this kind can only be used as temporary isolation measures and indoor materials with low requirements.

1.8.4. b. Hot-dip zinc coated base metal

The pre-painted steel sheet with hot-dip zinc-coated base metal as its base metal not only has the protective function of zinc coating but also has an isolation and protection function with its organic layer that prevents it from rusting and prolongs its service span longer, than that of hot-dip zinc steel sheet. The zinc content of hot-dip zinc base metal is generally 180 per 1 square meters (both sides), while that of the hot-dip zinc base metal for construction outdoors is 275 square meters per 1 square meters.

1.8.5. c. Hop-dip alu-zinc base metal

The hot-dip alu-zinc base metal adopts the hot-dip zinc aluminium coated steel sheet (55%Al-Zn) as its pre-painted base metal. The corrosive resistance of the hot-dip alu-zinc coated steel sheet is twice to 5 times as much as that of the hot-dip zinc coated base metal. It can satisfy the processing requirements of rolling, coiling and others processes alike. Its color won't change while continuously or intermittently working with an ambient temperature up to 316. Neither serious oxygenation nor oxide scale might appear while continuously or intermittently working with an ambient temperature up to 490. Its heat and the light reflected are respectively twice as much as those of hot-dip zinc steel sheet, and its reflectivity is more than 0.75, exceeding 0.65 (required by the EPA Energy Star Standard), which is an ideal construction materials of saving energy.

1.8.6. d. Electro-galvanized base metal

The pre-painted electro-galvanized steel sheet adopts an electro galvanized base metal coated and baked with an organic coating. Owing to the thin zinc-coated layer of the electro galvanized base metal, the zinc content of the pre-painted steel sheet of electro-galvanized base metal is usually 20/20g/m and the products of this kind are not suitable for building walls or roofs outdoors. However, it has aesthetic appearance and excellent machinability, which makes it suitable for electrical household appliances, acoustic devices, steel household appliances, interior decoration, etc".

In view of above, it was observed that there are 04 types of base metals used for manufacturing of pre-painted steel sheet or pre-painted galvanized/Galvalume steel sheet. The contents as well as the process of these

04 types of the items are different. Therefore, the values of the 04 items are also different.

1.9 Further, as per TECH TIPS BY INDUSTRIAL GALVANIZERS (AUSTRALIA) on the subject – “HOW MUCH DOES HOT DIP GALVANIZING COST?”, are also noteworthy. The relevant portion of the said report is as under:-

The fixed costs of a structural galvanizing plant are high. The furnace (kettle) must operate on a 24-7 basis and for this reason; large tonnages of structural steel can be processed at a much lower cost than smaller, 3-D items such as trailers. As a result, the cost of hot dip galvanizing steel can range from several hundred dollars per ton for large, on-going tonnages of structural steel, to several thousand per ton for small cash-sale items. It is long-standing industry practice to charge hot dip galvanized coatings on the basis of ‘white weight’. This is based on the weight of the steel after it has been galvanized. This weight is recorded by the galvanizer using certified weighbridge scales and the customer will be charged at a rate per kg or rate per ton, based on that weight.

1.10 It is also seen from Internet (metal Bulletin) that the value of M. S. Prime Galvanized Sheets /Coils is higher than the value of M. S. Prime Sheets/Coils. It is also relevant to mention here that thicknesses of the steel sheets imported by the importer are ranges from 0.37 mm – 0.47 mm. In General, these thicknesses are of Cold Rolled Steel. Therefore, the LME prices of Cold Rolled Steel for the relevant period also affect the price of these imported items.

1.10.1 NIDB data for contemporaneous imports were retrieved from NIDB. The comparison of import values of pre-painted steel sheets and import values of galvanized Pre-painted steel sheets is as under:-

Table-I

Month	Qty. (MTs) of Pre-painted Steel Sheets from China (0.47mm)	Average import price	Qty. (MTs) Galvanized Pre-painted Steel Sheets from China (0.47mm)	Average import price	Difference in Rs.
June -2015	4464.54	39407.89	2356.7	44770.10	5362.21
May – 2015	5493.35	38865.67	11554	40051.69	1186.02
April 2015	4130.37	38712.10	1623.5	40660.42	1948.32
March - 2015	2638.25	39011.31	1747.3	42055.87	3044.56

In view of above, it is observed that the import prices of galvanized pre-painted steel sheets are higher than the import price of pre-painted steel sheets.

1.10.2 Further, as per price list of Hot- Dip Galvanized Steel Strip by M/s Voestalpine Stahl GmbH available on internet, the price addition for Zinc Coating upto 100 gm/M² on Steel of thickness 0.45 mm – 0.49 mm is Euro – 42/per ton and the price addition for dimensions from 1200 to 1299 (width) for thickness 0.45 mm – 0.49 mm is Euro –88/per ton. As the thicknesses of the items imported by the importer are ranges from 0.35 mm to 1.2 mm hence there is also value addition.

1.10.3 The importer has also agreed with the facts in his statement that the prices of galvanized pre-painted steel sheets are higher than the import price of pre-painted steel sheets.

1.10.4 Therefore, it seemed that the importer, in order to evade Customs duty by way of undervaluing the goods, deliberately suppressed/hid the word – “galvanized/Galvalume” in description of the goods in their import documents, viz., – Import Invoice, Packing List, Bill of Lading, MTCs & Bills of Entry.

1.11 On perusal of the import data retrieved from EDI system version 1.5, it is observed that the importer has imported the item – “M. S. Prime pre-painted (Color Coated) steel Coils” under 30 Bills of Entry. The details of the bills of entry are as under:-

Table-II

S No.	B/E No.	Name of Exporters	Description of Imported Item	MTC No. and Date	Description of goods	Grade
1	9426481/02.06.2015	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils	Nil/06.05.15	M.S. Prime Colour Coated Steel Coils	JISG3312, RAL5012
2	9493158/08.06.2015	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220MM (RAL 5012)	Nil/31.05.15	M.S. Prime Colour Coated Steel Coils	JISG3312, RAL5012
3	2193664/10.08.2015	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220MM	Nil/18.07.15	M.S. Prime Colour Coated Steel Coils	JISG3312, RAL5012, RAL9002

4	2193725/10. 08.2015	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coil (ALLFINE)	NIL/20.05.15	M.S. Prime Colour Coated Steel Coils	JISG3312, RAL9002, RAL5012
5	2359456/25. 08.2015	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM	NIL/16.07.15	M.S. Prime Colour Coated Steel Coils	JISG3312, RAL5012,
6	2359574/25. 08.2015	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM	NIL/16.07.15	M.S. Prime Colour Coated Steel Coils	JISG3312, RAL5012, RAL6016, RAL3012
7	2432189/01. 09.2015	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM	NIL/23.07.15	MS Prime Color Coated Steel Coils	JISG3312, RAL9002, RAL5012, RAL6002
8	2432188/01. 09.2015	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM	NIL/23.07.15	MS Prime Color Coated Steel Coils	JISG3312, RAL9002, RAL6002, RAL3002, RAL6016
9	2631744/18. 09.2015	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.45*1220 MM (RAL 9002)	NIL/26.08.15	MS Prime Color Coated Steel Coils	JISG3312, RAL9002, RAL5012
10	2631431/18. 09.2015	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.90*1000 MM	NIL/25.08.15	M.S. Prime Color Coated Steel Coils	JISG3312, RAL5012, RAL6028, RAL3002, RAL8017
11	2814469/05. 10.2015	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM	NIL/25.08.15	MS Prime Color Coated Steel Coils	JISG3312, RAL5012, RAL6016

12	2801285/05. 10.2015	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.40*1220MM(RAL6016), 0.35*1220MM, 0.47*1220MM	NIL/27.08.15	MS Prime Color Coated Steel Coils	JISG3312, RAL5012
13	2913974/13. 10.2015	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM(RAL5012)	NIL/07.0915	MS Prime Color Coated Steel Coils	JISG3312, RAL5012, RAL6016
14	<u>2913976/13.10.2015</u>	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S Low Carbon Aluminium and Zinc coated Coils, 0.47*1220MM(RAL5012)	Nil/17.09.15	M.S Low Carbon Aluminium and Zinc coated Coils	JISG3312, RAL5012, RAL3002, RAL6002
15	<u>2939977/15.10.2015</u>	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM(RAL5012)	NIL/14.09.15	MS Prime Color Coated Steel Coils	JISG3312, RAL5012
16	<u>2984783/19.10.2015</u>	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S Low Carbon Aluminium and Zinc coated Coils, 0.47*1220MM	NIL/18.07.15	M.S Low Carbon Aluminium and Zinc coated Coils	JISG3312, RAL5012, RAL9002
17	<u>2984782/19.10.2015</u>	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM(RAL5012)	NIL/07.09.15	MS Prime Color Coated Steel Coils	JISG3312, RAL5012
18	<u>2984790/19.10.2015</u>	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM(RAL9002)	NIL/03.09.15	MS Prime Color Coated Steel Coils	JISG3312, RAL9002, RAL5012
19	<u>2984781/19.10.2015</u>	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM(RAL5012)	NIL/09.10.2015	MS Prime Color Coated Steel Coils	JISG3312, RAL5012
20	3005711/21.	Taizhou	M.S. Prime	NIL/25.	MS Prime Color	JISG3312,

	<u>10.2015</u>	city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	Colour Coated Steel Coils 0.47*1220 MM(RAL5012)	09.15	Coated Steel Coils	RAL6016, RAL3002
21	<u>3005969/21. 10.2015</u>	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM(RAL5012)	NIL/03. 09.15	MS Prime Color Coated Steel Coils	JISG3312, RAL5012, RAL9002
22	<u>3005862/21. 10.2015</u>	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM(RAL5012)	NIL/24. 09.15	MS Prime Color Coated Steel Coils	JISG3312, RAL5012, RAL9002
23	<u>3005719/21. 10.2015</u>	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM(RAL5012)	NIL/23. 09.15	MS Prime Color Coated Steel Coils	JISG3312, RAL5012, RAL3002
24	<u>3052111/27. 10.2015</u>	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S Prime Colour Coated Aluminum and Zinc Coils, 0.60*1220MM(RAL6016) ALLFINE	NIL/25. 09.15	M.S Prime Colour coated Aluminum and Zinc coated Coils	JISG3312, RAL6016, RAL3002, RAL5012
25	<u>3091723/29. 10.2015</u>	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S Prime Colour Coated Aluminum and Zinc Coils, 0.47*1220MM(RAL3004) ALLFINE	NIL/12. 09.2015	M.S Prime Colour coated Aluminum and Zinc coated Coils	JISG3312, RAL3004, RAL3002, RAL8017
26	<u>3120270/02. 11.2015</u>	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.90*1000 MM(RAL9003)	Nil/22.0 9.15	MS Prime Color Coated Steel Coils	JISG3312. RAL9003, RAL5012
27	<u>3250413/16. 11.2015</u>	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM(RAL5012)	FLH201 51021/2 1-10- 2015	MS Prime Color Coated Steel Coils	JISG3312, CGCC,Z30- Z40
28	<u>3250397/16. 11.2015</u>	Taizhou city,	M.S. Prime Colour Coated	FLH201 51022/2	MS Prime Color Coated Steel Coils	JISG3312, CGCC,Z30-

		Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	Steel Coils 0.47*1220 MM(RAL5012, 6016,6028,300 2)	2-10- 2015		Z40
29	<u>3250573/16.</u> <u>11.2015</u>	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM(RAL5012)	FLH201 51022/2 1-10- 2015	MS Prime Color Coated Steel Coils	JISG3312,
30	<u>3250548/16.</u> <u>11.2015</u>	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM (RAL9002)	JB20150 925/25. 09.15	MS Prime Color Coated Steel Coils	JISG3312, CGCC,Z30- Z40

** Grade is not mentioned in MTC, however the Coat Property & Contents mentioned in the MTC, is similar to the Grade - JISG3312

As per specifications available on internet, the full description of the Grades found in MTCs is as under:

- ASTM A792** - Steel Sheet, 55% Aluminum-Zinc Alloy -Coated by the Hot-Dip Process;
- JISG3312** - Pre-painted hot-dip Zinc Coated Steel Sheets and Coils <CGCC, CGCH, CGCD, CGC>;
- SGCC** - Soft forming quality hot dip galvanized steel;
- CGCC** - A form of PPGI (Pre-painted Galvanized Steel)

In view of above, it may be seen that the goods imported vide Bills of Entry mentioned in above table-I were "M. S. Prime Galvanized Steel Coils". However, the importer has mis-declared the goods as "M S Prime Color Coated Steel Coils" instead of "M. S. Prime Galvanized/Galvalume Sheets in Coils" in import documents.

1.11 In view of the above facts, the declared value is liable for rejection under Rule 12 (1) & 2 (iii) (a) (d) (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The said Rule is reproduced as under:-

Rule 12.Rejection of declared value. -

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further

information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3;

- (2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1);

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(d) the mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) then on-declaration of parameters such as brand, grade, specifications that have relevance to value;

1.11.1 Where the declared value is rejected, the value shall be re-determined by proceeding sequentially in accordance with rules 4 to 9;

Rule - 4. Transaction value of identical goods. -

"identical goods" means imported goods -

(i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;

(ii) produced in the country in which the goods being valued were produced;
and

(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

On perusal of the same, import data retrieved from EDI System Version 1.5, it was noticed that the grades of the imported steel were identical and the

Country of Origin was same but there were some differences w.r.t sizes (thickness) of steel, exporters. Hence these imports data cannot be considered as contemporaneous import data of identical goods as per Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Therefore, the value of the goods imported under the Bills of Entry mentioned in above Table cannot be re-determined under Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

1.11.2 Hence, the value of the goods imported under 30 Bills of Entry mentioned in table above is required to be re-determined under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, which is as under:-

Rule 5. Transaction value of similar goods.-

"similar goods" means imported goods -

- (i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
- (ii) produced in the country in which the goods being valued were produced; and
- (iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

5. Transaction value of similar goods.-(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

1.11.3 Accordingly, import data of similar goods retrieved from the EDI System 1.5. The details of the same were as under:-

Table-III

S No.	B/E No.	Description of Imported Item (Size and grades as per MTC)	Name of Exporter	Qty in MTs	Assessable Value per MTs	Redetermined Value Per MTs	Assessed value	Reassessed Value	Differential A.V.	Differential Duty in Rs	Duty
1	9426481/02.06.2015	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM JISG3312/06.05.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	186.69	625	665	7577508.89	8062598.7	485089	128200	2002603
2	9439158/08.06.15	M.S. Prime Colour Coated Steel Coils 0.47*1220 MM, RAL5012, JISG3312/13.05.15,	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	102.34	625	685	4183028	4450698.7	267670	70734.1	1105401.4 Duty Forgone
3	2193664/10.08.15	M.S. Prime Colour Coated Steel Coils 0.47*1200MM JISG3312/18.07.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	104.66	580	606	3945287.43	4122145.14	176857.7	52068.94	1161538
		25.30		550	606	904384.55	996467.34	92082	27109.49	266254	
4	2193725/10.08.15	M.S. Prime Colour Coated Steel Coils(ALLFINE) 0.47*1220MM, JISG3312/20.0515	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	106.63	580	606	4019699.7	4199735.68	180035.8	53004.3	1183440
5	2359456/25.08.15	M.S. Prime Colour Coated Steel Coils 0.47*1220MM, JISG3312, 16.07.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	133.32	545	606	4825129.11	5365189.4	540060	175269.78	1565935
6	2359574/25.08.15	M.S Prime Colour Coated Steel Coils 0.47*1220MM, JISG3312/16.07.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	131.68	545	606	4765593.12	5298989.7	533396.6	173107.25	1546614
7	2432189/01.09.15	M.S. Prime Colour Coated Steel Coils 0.47*1220MM JISG3312, 23.07.15,	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	106.69	545	570	3861442.30	4038572.7	177130.3	57485.4	1253183
8	2432188/01.09.15	MS Prime Color Coated Steel Coils 0.47*1220MM	Taizhou city, Zhongtu Imp And EXP. Co. Lt	77.29	545	570	2797250.25	2925602.33	128352.0	41655	907813
9	2631744/18.09.15	M.S. Prime Colour Coated Steel Coils 0.45*1220MM, JISG3312/26.08.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	79.107	515	570	2758940.28	3053584.3	294644	95623	895379

10	2631431/18.09.15	MS Prime Color Coated Steel Coils 0.90*1000MM, JISG3312/25.08.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	71.85	525	570	2554644.12	2773613.62	218969	71063.81	829077.80
		M.S. Prime Colour Coated Steel Coils 0.47*1220MM, RAL6016		188.56	520	570	6639935.43	7278390	638455.3	207202.7	2154908.2
11	2814469/05.10.15	MS Prime Color Coated Steel Coils 0.47*1220MM(RAL5012), RAL6016, JISG3312/25.08.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	104.881	500	553	3543044.2	3875013.0	331968.7	107736	1149851
12	2801285/05.10.15	M.S. Prime Color Coated Steel Coils 0.47*1220MM, RAL6016, JISG3312/27.08.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	137.839	500	553	4656418	5092704	436286	141591	1511181.9
		M.S. Prime Color Coated Steel Coils 0.35*1220MM RAL3002, **		22.382	510	553	771220.36	826942	55722	18083	250290.1
13	2913974/13.10.15	MS Prime Color Coated Steel Coils, 0.47MM*1220MM RAL5012, 0.60*1220MM/JISG3312/07.09.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	26.558	500	553	887189.9	981232	94042	30549	288205.4
		M.S. Low Carbon Aluminium & Zinc Coated Coils 0.40*1220MM Coated 9(ALLFIN E)RAL6016		52.174	510	553	1777769.83	1927660	149890	48621.4	576673.6
14*	2913976/13.10.15	M.S. Low Carbon Aluminium & Zinc Coated Coils 0.47*1220MM Coated 9(ALLFIN E)RAL5012, JISG3312/17.09.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	46.65	500	553	1558278.02	1723455.49	165177.4	53606.28	505719.7
		M.S. Low Carbon Aluminium & Zinc Coated Coils 0.40*1220MM Coated 9(ALLFIN E)RAL3002		34.343	510	553	1170198	1268862.56	98663.8	32020.10	379773.3
		M.S. Prime Colour Coated Steel Coils 0.47*1220MM RAL5012, RAL6002		48.765	500	553	1629031	1801708.72	172677.3	56040	528628
15	2939977/15.10.2015	MS Prime Color Coated Steel Coils, 0.47MM*1220MM, 0.90*1000MM, 0.95*1000MM, 0.47*1220MM, JISG3312-04.09.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	339	500	553	11356084.17	12559681.42	1203597	390612.13	3685475
16	2984783/19.10.15	M.S. Low Carbon Aluminium & Zinc coated Coils, 0.47*1220MM, RAL9002, JISG3312/18.07.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	130.113	500	553	4293956.70	4749116.10	455159.4	147716.3	1393550
17	2984782/19.10.15	M.S. Prime Colour Coated Steel Coils 0.47*1220MM RAI5012, 0.45*1220 RAL9002, JISG3312/07.09.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	106.68	500	553	3520461.6	3893630.61	373168.9	121112.9	1142575.4
				26.71	500	553	881377.74	974803.77	93426	30314.57	285986.58

18	<u>2984790/19.10.15</u>	M.S. Prime Color Coated Steel Coils, RAL90022,JISG3312/03.09.15 M.S. Low Carbon Aluminium& Zinc Coated Coils, RAL 5012,RAL 5019	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	311.21	500	553	10270507.62	11359144.93	1088637	353303.8	3333165
19	<u>2984781/19.10.15</u>	M.S. Prime Colour Coated Steel Coils 0.47*1220MM,Low Carbon Aluminium& Zinc Coated Steel coils RAL5012 ,RAL 9002 ,JISG3312/09.10.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	184.63	500	553	6093410.45	6739311.59	645901.4	209619.24	1977540
20	<u>3005711/21.10.15</u>	M.S. Prime color Coated, steel coils 0.47*1220MM,RAL6016,JISG3312.25.09.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	235	500	553	7765542.79	8588690.32	823147.5	267142.26	2520210
21	<u>3005969/21.10.15</u>	M.S. Prime color Coated, steel coils 0.47*1220MM,RAL5012,JISG3312/03.09.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	263.96	500	553	8711075.93	9634522.97	923447	299693.6	2827073
22	<u>3005862/21.10.15</u>	M.S. Prime color Coated, steel coils 0.47*1220MM,	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	208.56	500	553	6883637	7613156.54	729519.5	236756.7	2233998
23	<u>3005719/21.10.15</u>	M.S. Prime color Coated, steel coils,0.47*1220MM,RAL5012,RAL3002,RAL6016,RAL5012,JISG3312/23.09.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	185.84	500	553	6132847.21	6782929	650081.6	210975.97	1990339
24	<u>3052111/27.10.2015</u>	M.S. Prime color Coated zinc &aluminium steel Coils,0.50*1220MM,0.45*1220,0.45*1220,0.80*1220,0.45*1220MM ,JISG3312/25.09.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	177.91	500	553	5871440	6493813.02	622372.6	201983.1	1905501
25	<u>3091723/29.10.2015</u>	M.S. Prime color Coated zinc & aluminium steel coils,RAL3004,6016,6028,8017,3002,JISG3312/12.09.15	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	160.553	500	523	5297869.9	5859444.14	561574.2	182251.8	1719357
26	<u>3120270/02.11.2015</u>	M.S. Prime color Coated, steel coils,0.90MM*1000MM,1.22MM*1000MM,0.47*1220MM,RAL9003,5012	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	57.377	500	523	1893541.41	1980644.3	87102.9	28268.1	614525.19
				62.98	500	523	2079044.24	2174680	95636.03	31037.5	674727.7
				65.57	500	523	2164122.75	2263672	99549.64	32307.5	702339.02
27	<u>3250413/16.11.2015</u>	M.S. Prime color Coated steel coils, 0.47MM*1220MM,RAL5012,JISG3312	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	103.82	500	523	3470806	3630463.51	159657.09	51814	1126407

28	<u>3250397/</u> <u>16.11.2015</u>	M.S. Prime color Coated steel coils, 0.47MM*1220M M,RAL501,3012, 6016,6028, JISG3312	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	208.70 7	500	523	6977283.71	7298238.76	320955.0	104161.9	2264390
29	<u>3250573/</u> <u>16.11.15</u>	M.S. Prime color Coated steel coils, 0.47MM*1220M M, RAL5012, JISG 3312	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	77.38	500	523	2587024.5	2706027.6	119003.12	38621	839587
30	<u>3250548/</u> <u>16.11.2015</u>	M.S. Prime color Coated Steel Coils ,JISG 33120.47MM*12 20MM, RAIL 9012	Taizhou city, Zhongtu Imp And EXP. Co. LTD, Zhenjiang Province, CHINA	21.56	500	523	720705	753857.9	33152.45	10759.21	233895
		M.S. Prime color Coated Steel Coils 0.90*1000MM, 1.00MM*1000M M, RAL 9003		82.77	500	523	2767150.7	2894439.66	127288.9	41310	898044.1

Assessed Value=16,45,63,883, Re-determined Value=17,90,13,436, Duty Paid=5,24,31,209, Re-determined Duty=5,70,61,745, Duty Diff=46,60,537, Difference in Assessable Value=1,44,49,553.

In view of above table, it may be noted that:

- (i) the grades of the imported goods and the goods compared with were identical;
- (ii) the sizes (thickness/width) of the imported goods are also very similar;
- (iii) the Country of Origin of the goods is also same, i.e., China;
- (iv) the Country of Export is also same, i.e., China;
- (v) the quantity of the imported goods are less than the quantity of the goods compared with (there is always more discount available on more quantity than the less quantity);

Therefore, the value of the goods may be re-determined under Rule 5 the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as per details in the above table.

1.12 In view of the above, it was observed that the importer attempted to evade customs duty of Rs.46,30,537.1/- (Rupees forty six lakh thirty thousand five hundred thirty seven only) by way of mis-declaration & undervaluation of the goods imported vide Bills of entry mentioned in Table-III.

1.13 Relevant provisions of Customs Act, 1962 applicable to the goods imported under bills of entry mentioned in Table III above in the instant case related to recovery of differential duty with interest and penalty are reproduced below:-

1.13.1 SECTION 17. Assessment of duty. -(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

1.13.2 "SECTION 111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation": -

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

1.13.3 SECTION 112. Penalty for improper importation of goods, etc.- Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;

1.14.4 Section 28. Notice for payment of duties, interest etc.-

(4) Where any duty has not been levied or has been short-levied or has been erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

- (a) Collusion; or
- (b) Any willful mis-statement; or
- (c) Suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date serve notice on the person chargeable with duty or interest which has not been so levied or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause as to why he should not pay the amount specified in the notice.

1.14.5 Section 28AA Interest on delayed payment of duty:-

(1) Notwithstanding anything contained in any judgment, decree order or direction of any authority or in any other provision of this Act, or the rules made there under, the person who is liable to pay duty in accordance with the provisions of section 28, shall in addition to such duty, be liable to pay interest, if any at the rate fixed under sub-section (2), whether such payment is made voluntarily or determination of the duty under that section.

(2) Interest at such rate not below ten percent and not exceeding thirty six percent per annum, as the Central Government may, by notification in the Official Gazette, fix shall be paid by the person liable to pay in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be upto the date of payment of such duty.

1.14.6 Section 114A of the Customs Act, 1962:- Penalty for short levy or non-levy of duty in certain cases:-

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

1.14.7 SECTION 114AA. Penalty for use of false and incorrect material.-

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

1.14.8 SECTION 125 of the Customs Act, 1962 Option to pay fine in lieu of confiscation.-

“(1) whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit.

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(3) where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.”

1.15 In the instant case, at the time of filing said 30 bills of entry, (mentioned in table I & III above), the importer had cleared the goods “M. S. Prime Galvanized/Galvalume Sheets/Coils” by mis-declaring the goods as “Mild

Steel Pre-painted/Color Coated Sheets/Coils". The importer had undervalued the goods to the extent of Rs.1,44,49,553/- and evaded customs duty of Rs.46,30,537.1/-.

1.16 In the statements of Shri Sandeep Kumar Director of the importer, he agreed that there was mis-declaration w.r.t. the description of the goods imported under the said bills of entry and he also agreed to the fact that the value of the pre-painted galvanized steel was higher than the pre-painted steel sheet. Further, he also agreed to enhance the value of the item as per Custom Assessment Practice. Accordingly, these acts and omissions of the importer rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

1.17 It is liability of the importer under self-assessment of the duty while filing the bills of entry for clearance of imported goods in terms of provisions of section 17(1) of the Customs Act, 1962. But the importer has wrongly described the imported goods and undervalued the imported goods in order to evade customs duty. Therefore, for aiding and abetting the evasion of Customs Duty, the importer is also liable for penal action under Section 112(a) and/or 114A and/or 114AA of the Customs Act, 1962 in addition to penalty on the importing firm.

As the importer willfully mis-declared the description and suppressed the full description of the goods in the import documents, therefore, extended period of five years for recovery of non-levy of Customs Duty is required to be invoked in terms of section 28 of the Customs Act, 1962.

1.18 As per statements dated 11.12.2015 of Shri Sandeep Kumar, Director of the importing company, was dealing with all the imports. Shri Sandeep Kumar played an active and important role in procurement of imports and clearance of the imported goods. Therefore, it appeared that he was well aware of the said *modus operandi* adopted by the importing company for evasion of Customs Duty. Therefore, it also appeared that Shri Sandeep Kumar was involved in his individual capacity for aiding and abetting the evasion of Customs Duty and accordingly, he is also liable for penal action under section 112(a) of the Customs Act, 1962.

1.19 Therefore, a show cause notice No. S/43-31/SIIB/INV/CHM/2015-16 dated 10.07.2017, was issued to the importer by the Additional Commissioner, Customs House, Mundra asking them as to why:-

- (a) the declared assessable value of Rs.16,45,63,883/- (rupees sixteen crore forty five lakh sixty three thousand eight hundred eighty three

- only) should not be rejected under Rule 12(1) & 2(iii) (a), (d) and (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;
- (b) the assessable value of the imported goods under Bills of entry mentioned in Table-III above should not be re-determined as Rs.17,90,13,436/- (rupees seventeen crore ninety lakh thirteen thousand and four hundred thirty six only) (as mentioned in Table-III above) under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;
 - (c) Total Customs differential duty amounting to Rs.46,30,537/- (rupees forty six lakh thirty thousand five hundred thirty seven only) as detailed in the Table III above, evaded by them, should not be demanded and recovered from them under provisions to section 28(4) of the Customs Act, 1962;
 - (d) Interest at prescribed rate should not be recovered from them on the differential customs duty under section 28AA of the Customs Act, 1962;
 - (e) The good imported under Bills of Entry mentioned in Table III above, should not be held liable for confiscation under section 111(m) of the Customs Act, 1962;
 - (f) Penalty should not be imposed on the importer under Section 112(a) or and section 114A or/and section 114AA of the Customs Act, 1962.
 - (g) Redemption Fine should not be imposed on the importer under Section 125 of the Customs Act, 1962.

1.20 Further, Shri Sandeep Kumar, Director of the importer was issued a show cause notice No. S/43-31/SIIB/INV/CHM/2015-16 dated 10.07.2017 by the Additional Commissioner, Customs House, Mundra asking him as to why:-

- (i) Penalty should not be imposed on him under section 112(a) or and section 114AA of the Customs Act, 1962.

2.0 WRITTEN SUBMISSION AND PERSONAL HEARING:

The noticees have, vide letter dated 29.06.2018, 23.09.2017 and 26.12.2018, submitted written submission wherein they have, *inter alia*, submitted that:

A. The importer has declared the description of the goods as given in the Bill of Lading, as required under Sub-Section (2) of Section 46 of the Customs Act, 1962, and hence complied with the legal requirement of the Act. Similarly, as per Sub-Section (4) of Section 46, the importer must subscribe to the veracity of the declaration and produce invoice in support of the same.

As per the requirement of law, the noticee has declared the description of the item as given in the invoice and packing list. There are three broader descriptions of the items declared in the bills of entry listed the SCN. They are:

Description I	Description II	Description III	Description IV
M.S Prime Colour Coated Prime Sheet Coils	Aluzinc Coated Steel Coil	MS Low Carbon Aluminium and Zinc Coated Coils	MS Prime Coated Aluminium and Zinc Coils

The detailed packing list and the mill certificate indicating the Quality Standards of the item supplied by the supplier was also presented along with the bills of entry. In all the cases, the noticee has submitted Mill Certificates indicating the composition of steel sheets, nature of coating and legible mention of standards in Japanese Standards indicated as JISG3312 meaning 'Pre-painted hot dip zinc coated steel sheets and coils'. The actual declaration of Quality Standards adds credence to the fact that there is no suppression of any material facts regarding description. Thus, there is no mis-declaration of any details in this case.

B. There is no suppression of details in the declaration of description. The descriptions declared are actual descriptions and the same is widely known in trade parlance. Colour coating is the process of painting the surface of the steel sheets for the purpose of enhancing the appearance and corrosion resistance. Universally, colour coating is done only on the galvanized steel sheets as colour coating done on non-galvanized steel sheets won't long last against corrosion even for few months. It is due to this fact that the nature of base metal/basic material is not described in the trade. In this case, the base material for all colour coated coils are zinc coated sheets or galvanized sheets. It may be noted that galvanization in itself is a process of applying zinc coating on the steel base materials and hence the supplier did not mention about the nature of base material in this case. The genuineness of supplier's description can be appreciated from the fact that the description of the item primarily depends on the kind of material used in the coating. This is evident from the following pattern of describing the imported goods based on the nature of coating;

Sl. No.	Description of the item	Nature of Coating
1	M.S Prime Colour Coated prime coils	When the base material is coated with normal painting
2	Aluzinc Coated Steel Coil	When the base material is coated with Aluminium and Zinc
3	M.S Low Carbon Aluminium and Zinc Coated Coils	When the base material (Low carbon M.S Steel is coated with Aluminium and Zinc
4	M.S Prime Coated Aluminium and Zinc Coils	When the base material is coated with Aluminium and Zinc

From the above, it is evident that the description is based on the nature of coating rather than the nature of base material. This is also because of the reason that the nature of coating plays a vital role in the appearance and application of the coated steel coils. For instance, a base material coated with aluminium and zinc coating may have better corrosion resistance than the one

painted with normal paint. In addition, the former may look luster than the latter. The identification of the item by the trade is based on the nature of painting rather than the nature of base material and hence the declaration in the import document was based on the coating. This makes it very clear that the description in the import documents and bills of entry are as per the nature of coating and the mention of nature of base material, i.e., galvanized/galvalume is of no significance in this case.

C. The notice strives to establish that the impugned goods are galvanized/galvalume sheet in coils and hence to allege suppression of these words in the description by the noticee for the purpose of under-valuation. There is a fundamental flaw in understanding of the process of galvanization and galvalume by the Department and this is evident from equating galvanization with galvalume. Galvanization (or galvanizing as it is most commonly called in that industry) is the process of applying a protective zinc coating to steel or iron, to prevent rusting. The most common method is hot-dip galvanizing, in which parts are submerged in a bath of molten zinc. Whereas, Galvalume is proprietary steel with a coating consisting of 55% aluminum, 43.4% zinc and 1.6% silicon over the base metal to protect it from the elements. This coating has superior corrosion resistance which gives it two to four times the life span over traditional galvanized metal. There is gamut of difference between these two processes, still the Notice is casual in equating these two processes.

Due to the obvious fact that the base material of the impugned goods are galvanized sheets by virtue of its description on the bills of entry. The universal description of galvalume is that it "is proprietary steel with a coating consisting of 55% aluminium, 43.4% zinc and 1.6% silicon over the base metal to protect it from the elements". Whereas the MI Test conducted on the live bills of entry confirmed the presence of 6.04% of zinc with no aluminium at all. In none of the imports, the percentage zinc and aluminium present in the steel sheets would make it eligible to be called as galvalume. Added to this exclamation, the Notice abruptly traverse to analyse the cost of galvanization in order to prove the perceived under-valuation in this case. There is a inconsistency throughout the notice starting from comparing the description of the impugned goods with incomparable to the cost comparison with totally different items.

D. The SCN is based on internet sources/materials. The notice refers to para 5.3 of the SCN and submitted that the cost of manufacturing depends on the nature and types of processing. This proposition is of no avail to the Department as the value declared by the noticee is the genuine transaction value for galvanized colour coated steel sheets and no evidence has been adduced by the Department to prove under-valuation by the noticee.

The law regarding reliance of document and literature are well settled in Customs with specific reference to valuation. The reliance based on the extraneous literature from some un-authentic source is irrelevant to the facts in issue on following counts:

- There is an illustration of cost of structural galvanizing plant and costing of hot dip galvanizing in the SCN. The cost of the plant is in no way related to the issue on hand. Similarly, method of charging the price hot dip galvanizing too totally unrelated to the issue of alleged under-valuation in this case.
- The issue on hand is not about the cost of manufacturing of galvanized sheets but about the genuinity of declared value of impugned goods. What is given in the SCN is the factual and most general information about general manufacturing process which does not have any relevance to the subject issue either by process or by the product.
- There is no data on valuation of the item in given in the un-authentic literature reproduced in the SCN. In the absence of the details from the country of origin from where the subject goods have originated (China) and the exact nature of manufacturing process carried out by the supplier of the impugned goods.

The fact is that none of these details are relevant to the facts in issue and in no way, helps to substantiate allegation. The notice conveniently ignores to explain the process of galvanization but has the audacity to compare the same with the process of galvalume. There is no clarity in respect of difference between galvanization and galvalume, still it was held that the impugned items are galvanized/galvalume; general facts regarding cost involved in different process of coating/painting without any relevance to the fact issue has been brought out in the SCN. There is an un-authentic reference to cost involved in manufacturing hot dip galvanizing which has no relevance to the current issue.

There is an undue reliance on un-authentic literature from Internet sources and none of the references cited in the SCN are relevant to the facts in issue.

E. The value of imported goods is governed by the concept 'transaction value' as provided in the Customs Act and Rule. The notice referred to Section 14 of the Customs Act, 1962 and submitted that as per the provisions of The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the value declared by the noticee shall be regarded as transaction value as Rule 3 of the said Rule deals with determination of the method of valuation. As per the rule 3, the value declared by the noticee is the transaction value as

there are no restrictions as to the disposition or use of the goods by the buyer; the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued; no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller; and the buyer and seller are not related in this case.

F. Cardinal rule of valuation is that before proceeding to re-determine the value, the authorities must reject the value as per the relevant provisions. The noticee referred to Rule 12 of the CVR, 2007 and submitted that to doubt the veracity of the declared value, clauses (a), (d) and (e) of rule 12 of the CVR are the reasons to reject the declared value.

The noticee submitted that there is a desperate attempt in the SCN to show that the contemporaneous import price of pre-painted steel sheets is lower than the galvanized pre-painted steel sheets which is elaborated in Table-I in Para. 6.3 of the SCN.

There are numerous anomalies in the comparison of NIDB data as the same is completely in violation of the relevant provisions of Valuation Rule. The foremost anomaly is that there is an attempt to compare the two incomparable. The allegation is that the noticee has mis-declared the description as 'pre-painted steel sheets' (actually the declared description in the bills of entry is 'prime colour coated steel sheets) as against the actual description of 'galvanised pre-painted steel sheets'. The average value for 'pre-painted steel sheets' have been taken from NIDB and the same have been compared with the average value of 'galvanized pre-painted steel sheets'. The relevant Rule does not allow for averaging out the quantity as has been done in this SCN that too comparing with two different entities unrelated to the subject import. The noticee referred to Note to Rule 4 of the CVR to determine the value of the import items based on the valuation data of identical items.

The Note to Rule 4 *mutatis-mutandis* apply to Rule 5 which deals with re-determination of value based on the valuation data of similar goods and prescribes the strict ways and means of re-determining the value. As per the above, while comparing the value of import goods with that of identical/similar goods, such comparison should be made only on the basis of demonstrated evidence of valuation data being compared. In this case, there is no authenticity, accuracy and details of value used for making comparison; neither copies as evidence of such data are made available to the noticee; nor the same has been made part of relied upon document. The valuation data on different goods were averaged and simply subtracted to arrive at the differential value.

The noticee re-produced para 6.4 of the SCN and submitted that it is irrelevant to for the purpose of justification of undervaluation of the items by the noticee. Firstly, some vague detail has been obtained for some Internet sources; secondly, the entity compared is from Germany, a country different from the country of origin, China in this case; the price reference is for some unrelated process such as 'zinc coating'.

G. There is no mis-declaration in this case, the noticee craves to point out that none of the provisions of valuation has been followed in the length and breadth of the SCN. The notice has reproduced Table-III of the notice and submitted that for all the goods covered under the bills of entry, the differential duty has been arrived at by simply mentioning some assumed value in column no. 7 and straight away the value of each item is re-determined in column no. 8. The details regarding similar goods such as exact description, quantity, dimension, etc have not been given except making a mention in foot note.

H. Even assuming that the declared value qualifies rejection, the same needs to be re-determined by following the procedure as per Rule 4 of the CVR. As per Rule 4(3), which is equally applicable for Rule 5 also, if more than one transaction value of similar goods is found, the lowest of such value shall be used to determine the value of imported goods. There is no scope for factious or average value concept in the application of valuation rules and each value declared in the bill of entry needs to be empirically shown with details of description, value and quantity. There are more than one transaction value of similar goods are available for comparison (the averaging of value as in Para. 6.3 of SCN was possible because of availability of more than one value). The noticee quoted the valuation data for the corresponding months of the year of import showing the similar description, value and quantity in unit price. As per the details of value of similar items, there are numerous clearances of similar items far less than the value of subject imported items, from various ports.

I. The SCN places reliance on the statement of Shri Sandeep Kumar, Director of the importer to establish the impugned goods was M.S prime pre-painted galvanized/galvalume sheets in coils; the prices of M.S Prime pre-painted galvanized steel sheets are higher than M.S Prime colour coated steel sheets in coils; he agreed to enhance the value of the items as per Customs Assessment Practice. These statements were never given by the noticee and the department has twisted the statements in their favour. In this case the copy of the statement was not handed over to Shri Sandeep Kumar nor was the same provided as per the subsequent request by the noticee.

J. There is no mis-declaration of description, the value declared in the bills of entry are genuine transaction value. There is a proposal to impose penalty on the Director of the company under multiple Sections of Customs

Act, namely, Section 112(a) and 114AA, Firstly, there is an ambiguity in proposing penalty under these Sections as it is not clear under which Section the penalty is to be imposed. It is evident from the usage of words 'or' and 'and' while refereeing these Sections. It is submitted none of the provisions can be applied on the noticee as he has neither directly nor indirectly played any role, whatsoever in the entire process of import of the impugned goods. Neither there is documentary nor other evidence to prove the abetment of alleged act of mis-declaration in mis-declaring the goods for undervaluation. The noticee has reproduced section 112 and 114AA of the Customs Act and submitted that in order to impose penalty under the above Section, it should be proved that a person knowingly on intentionally made, signed or used, or caused to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act. Evidently, there is nothing to prove in the SCN that the Co-noticee did any of the above things in order to be penalized as per the above provision.

During the hearing on 29.11.2018, learned consultant of the noticee sought copy of statement of Shri Sandeep Kumar, Director of the noticee, which was subsequently provided to them. The learned consultant, vide letter dated 26.12.2018, *inter alia*, pleaded on statement tendered by the director of the importer, wherein he has compared the text of statement given by Shri Sandeep Kumar vis`-a-vis` his statement discussed in the show cause notice. The learned consultant has submitted that case has been built by twisting the statement of Shri Sandeep Kumar in department's favour.

DETAILS OF PERSONAL HEARING:

Personal hearing in the case was held on 29.11.2018. Shri E. Ramesh, learned consultant appeared for hearing on behalf of the importer and Shri Sandeep Kumar, Director of the importer. During hearing he, *inter alia*, reiterated that:

- (1) Declared description is "M. S Prime Colour Coated Sheet in Coils" whereas the allegation is that the goods were in fact "M.S Pre-painted Galvanised/ Galvalume Sheets". In various Bills of Entry there are 3-4 types of goods, whereas for all types the department has alleged that the description should have been "M S Pre-painted Galvanised/ Galvalume Sheets:.". He specifically pointed out import of "Aluzinc Coated Steel Coils" or "M.S Low Carbon Aluminium and Zinc Coated Coils" or "M.S Prime Coated Aluminium and Zinc Coils".
- (2) The goods are colour coated and in market parlance it is understood that all colour coated sheets and necessarily Galvanised and hence they did not declare the description "Galvanised" for the goods imported by them.

- (3) The B/E mentions that other details other than description is as per invoice and packing list. This is for all Bills of Entry. The invoice gives the width and thickness & detailed packed list gives colour, weight, etc.
- (4) Galvanisation is mere coating by zinc but Galvalume is different process where is coating consists of:

Zinc	-	43.4%
Aluminum	-	55%
Silicon	-	1.6%

In the SCN the % of zinc mentioned is 6.04% - 14.08% and no aluminum and hence description of "Galvalume" cannot be given and allegation the deptt. are unfounded in this context.

- (5) Valuation: The goods have been imported against an L/C and the transaction is arm length transaction and hence there is no scope for rejection of declared value.
- (6) They have not been supplied with relied upon documents, like, statement of the noticee Shri Sandeep Kumar recorded under section 108 of the Customs Act, 1962.
- (7) The basis of loading of value is average values observed which is against the Customs Valuation Rules, 2007. No specific instance in form of import B/E has been given to load the value. The basis on which the value has been loaded has not been discussed.
- (8) He submitted the evidence for lower price from website www.zauba.com for the goods they have imported.
- (9) He challenges the extended period as there is no suppression of facts, or wilful mis-statement etc. There is no cause to impose penalty on Shri Sandeep Kumar, Director as the charges against the company itself are not proved and there is no malafide intentional act to evade the customs duty. Proceedings under the subject SCN may be dropped. He also submitted a copy of written submission dated 23.09.2017.

3.0 DISCUSSION AND FINDINGS:

I have carefully gone through the records of the case as well as the submissions made by the consultant on behalf of the importer and the Director of the importer in the written submission as well as oral submissions at the time of personal hearing.

3.1 The points for determination in this case are whether:

- (a) the goods imported and cleared by the importer is "M.S. Prime Color Coated Sheet in Coils" OR "M. S. Prime Galvanized/ Galvalume Sheets/Coils"; and whether there is any intentional

mis-declaration of description by suppressing the word "Galvanised".

- (b) Whether, the declared assessable value of Rs.16,45,63,883/- is liable to be rejected under Rule 12(1) & 2(iii) (a), (d) and (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, under the facts and circumstances of the case;
- (c) the assessable value of the imported goods under Bills of entry mentioned in Table-III required to be re-determined as Rs.17,90,13,436/- under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;
- (d) Total Customs differential duty amounting to Rs.46,30,537/- as detailed in the Table III above, is required to be demanded and recovered from them under provisions to section 28 (4) along with interest under section 28AA of the Customs Act, 1962 on differential customs duty;
- (e) The goods imported under Bills of Entry mentioned in Table III above, are held liable for confiscation under section 111(m) of the Customs Act, 1962;
- (f) Penalty is liable to be imposed on the importer under Section 112 (a) or and section 114A or/ and section 114AA of the Customs Act, 1962.
- (g) Redemption Fine is liable to be imposed on the importer under Section 125 of the Customs Act, 1962.
- (h) Penalty on Shri Sandeep Kumar, Director of the importer is liable to be imposed under section 112(a) or and section 114AA of the Customs Act, 1962.

The copy of the statement recorded under section 108 of the Customs Act, 1962 of Shri Sandeep Kumar, Director was given to the learned consultant and he has acknowledged it through email dated 04.12.2018 and he has stated that no further personal hearing is required as point regarding efficacy of statement has been dealt within his reply.

3.2 First of all I discuss the description of goods shown in the import documents, i.e., Bills of Entry, invoice, packing list and mill test report. The noticee has mentioned mainly following description of the goods in the bills of entry, viz.:

1. MS Prime Color Coated Steel Coils 047*1220MM, JISG3312
2. M.S. Prime Colour Coated Steel Coils 0.47*1220 MM, JISG3312
3. M.S. Prime Colour Coated Steel Coils 0.45*1220MM, JISG3312
4. MS Prime Color Coated Steel Coils 0.90*1000MM, JISG3312
5. MS Prime Color Coated Steel Coils 0.47*1220MM(RAL5012), JISG3312

6. M.S. Prime Color Coated Steel Coils 0.35*1220MM
7. MS Prime Color Coated Steel Coils,0.47MM*1220MM 0.60*1220MM, JISG3312
8. M.S. Low Carbon Aluminium & Zinc Coated Coils 0.40*1220MM Coated
9. M.S. Low Carbon Aluminium & Zinc Coated Coils 0.47*1220MM Coated, JISG3312
10. M.S. Low Carbon Aluminium & Zinc Coated Coils 0.40*1220MM Coated
11. MS Prime Color Coated Steel Coils, 0.47MM*1220MM, 0.90*1000, 0.95*1000MM, 0.47*1220MM, JISG3312

3.3 The learned consultant has argued that there is no mis-declaration of description for the purpose of undervaluation. The learned consultant has proffered that they have mentioned the product in Japanese standards, *e.g.*, JISG3312 which means "Pre-Painted Hot Dip Zinc Coated Steel Sheet & Coils". He has stated during the personal hearing that it is understood that all colour coated sheets are necessarily galvanized. Hence, they did not declare the description "Galvanized" for the goods imported by them. In this context it is seen that the 'JISG3312' is a code used in Japanese standard. More significantly, I find that the learned consultant has made a sweeping statement that in market parlance it is understood that all colour coated sheets are necessarily galvanized. I find that such a statement does not have any legal or technical basis. No case law has been submitted nor any technical facts/technical literature are brought forth in support of his statement that in market parlance any colour coated sheets means it is also a galvanized. Hence, I hold that the contention made by learned consultant that as per market parlance if goods are colour coated it is understood that they are galvanized is without any basis. However, at the same time the mentioning of JISG3312 is a part and parcel of the description and meaning of the code is available in public domain and what JISG3312 means has been given at the bottom of Table-II in the Show Cause Notice itself. I thus hold that mentioning of Grade JISG3312 is a part and parcel of description itself. Hence, there does not appear any mis-declaration.

3.4 The other argument made by the learned consultant is that galvalume is proprietary steel with a coating consisting of 55% Aluminium, 43.4% Zinc & 1.6% Silicon and there is gamut of difference between galvanized & galvalume and these two cannot be equated. The learned consultant has stated that the Show Cause Notice itself mention that % of Zinc is between 6.04% to 14.08% and no aluminium. Thus, I find that there is considerable force in the

contention of the learned consultant that the goods imported by them & covered under subject Show Cause Notice are not quantified to be called Galvalume. However, the allegation in para 7 of the Show Cause reads as:

“In view of the above, it may be seen that the goods imported vide bill of entry mentioned in the above table I were “M.S. Prime Galvanized Steel Coils”- However, the importer managed to mis declare the goods as - “M. S. Prime Colour Coated Steel Coils” instead of M.S. Prime Galvanized/ Galvalume Steel in Coils” in import documents”.

Thus, I find that the allegation is that description is “M.S. Prime Galvanized/Galvalume Steel in Coils”. Thus, the allegation is not restricted to description “Galvalume” only but also alternatively mentions “Galvanized Steel”.

The subject goods covered under the Show Cause Notice being adjudicated, thus, cannot said to be Galvalume but are definitely Galvanized M.S. Steel Sheets in Coils.

4. I refer to the summary of the statement dated 11.12.2015, of Shri Sandeep Kumar Director of M/s. Zhongtu India Pvt. Ltd.(ZIPL) recorded u/s 108 of the Customs Act, 1962, wherein he, *inter alia*, stated that :-

(a) He agreed that imported item is M.S. Prime Pre-painted Galvanized Steel in Coils.

(b) He agreed that prices of the M.S. Painted Galvanized Steel Sheet in coils is higher than M.S. Prime Colour Coated Steel Sheets in Coils.

(c) He agreed that on examination the goods were found as Hot Dip Galvanized Colour Coated Steel Sheet & also agreed to enhance the value of the item as per Custom Assessment Practice.

4.1 I have gone through the further written submission dated 26.12.2018 by the learned Consultant who has taken a plea that they had declared in all the Mill Test Certificates (MTCs) that the product belong to JISG3312 which is standard of galvanized colour coated coils for Japanese Industrial Grade Standard which clearly stands for pre painted hot dip Zinc coated Steel Sheet and Coils. He has also stated that verification can be done from the Mill Test Certificate produced by them along with import documents. More significantly the learned consultant has flatly denied that the noticee No.2, Shri Sandeep Kumar has at all mentioned in his statement that he also agreed that the prices of M.S. Pre-painted Galvanized Steel Sheet in Coils is higher than M.S. Prime Colour Coated Steel Sheets in coils and that he ever agreed to enhance the value of item as per Customs Assessment Practice. The learned consultant

has mentioned this as an attempt by the department to prejudice the adjudicating authority. I have gone through the entire statement of Shri Sandeep Kumar, Director, M/s. Zhongtu India Pvt. Ltd. dated 11.12.2015. I find that the learned consultant is factually correct inasmuch as the noticee No.2 Shri Sandeep Kumar has nowhere stated that the price of M.S. Prime Galvanized Steel Sheets in Coils is higher than M.S. Prime Colour Coated Steel Sheets in Coils and never ever agreed for enhancement of value as per Custom Assessment Practice. In fact Shri Sandeep Kumar has stated in his answer to Question 26 is as follows:-

... "We had not mis-declared the description of goods anywhere as per JISG3312 grade which we had clearly mentioned in MTC which they had provided along with import documents, viz., invoice, packing list & Bill of lading. We consider M.S. Prime Colour Coated Coils same as M.S. Low Carbon Hot Dip Zinc Coated Pre Painted Steel Sheet in Coils. You can also verify the trade price in China for the period as per standard JISG3312".

4.2 From the above, I find that what has been attributed to statement/confession of Shri Sandeep Kumar vide the statement dated 11.12.2015 in para 3 (vii) & (viii) of the Show Cause Notice, as mentioned in the notice, is incorrect and I hold that this is misleading and vitiates the Show Cause Notice.

4.3 I also find that the Table-II in para 7 of the show cause notice give the details of the 30 Bills of Entry wherein details of Grade mentioned in each of the MTC is mentioned in the last column. I find that grade JISG3312 has been disclosed in each case of imports. The further Grading RAL5012, RAL9002, RAL6016, RAL3012, RAL6002, etc., also appears. At the footnote it is clarified that JISG3312 means 'pre painted hot dip zinc coated steel sheets of coils'... <CGCC, CGCH, CGCD, CGC>

Where CGCC=> A form of PPGT (Pre painted Galvanized Steel)

SGCC-> Soft forming quality hot dip galvanized steel.

4.4 I find that the para 2 of the show cause notice dated 10.07.2019 also mentions as regards live Bills of Entry 3250413, 3250397, 3250548, 3250573, all dated 16.01.2015 the following is stated:-

... "further as per Mill Test Certificate dated 28.10.2015 issued by the supplier M/s. Taizhou City Zhongtu Import & Export Co. Ltd. the imported goods were declared as "M.S. Prime Colour Coated Sheet in Coil", however, the grade of the goods in MTC were declared as "JISG3312" and the basic material is declared as "CGCC". As per the details available on internet, JISG3312 stands for Japan

Industrial Standards. Its base metal is cold rolled steel & CGCC stands for soft forming quality hot dip galvanized steel”.

The Show Cause Notice further states that as per Mill Certificate goods were pre-painted Steel Coils with Zinc Coating of 30-40GSM.

4.5 Moreover, Shri Sandeep Kumar, Director of Zhongtu India Pvt. Ltd., has in his statement recorded under section 108 of the Customs Act, 1962 on 11.12.2015 has clearly mentioned in answer to question no. 26 that he has not mis-declared the description of goods anywhere and grade JISG3312 has been mentioned in MTC along with import documents.

4.6 I find in the records of the SIIB investigation file that the various Mill Certificates issued by M/s. Fuyang Fulihua Colour Plate Co. Ltd., DaYuan Industry Area, FuYang District, HangZhou City, Zhejiang Province, China-311413 to their customers M/s. Taizhou City Zhongtu Import & Export Co. Ltd., Zhejiang, China-318000 which mentions the zinc coating. Thus, I find that there is no suppression of description of being “galvanized”. Thus, I hold that there is no suppression of description of subject goods being “Galvanised”. Now, I proceed to examine whether there is willful mis-statement as regards declared value of goods.

5. The learned consultant during the personal hearing has stated that the goods have been imported against a Letter of Credit and the transaction is at arms length and there is no scope for rejection of value. He has made a very cardinal and serious statement that the basis on which the value has been loaded has not been disclosed. He has submitted the evidence for lower price from website www.zauba.com in support and submitted that they have imported goods at a correct price. He has also challenged the extended period invoked as there is no suppression of facts or willful mis-statement. He has also stated that there is no case to impose the penalty on Shri Sandeep Kumar, Director as the charges against the company itself is not proved and he has requested that proceedings may be dropped.

5.1 In the written submission dated 23.09.2015, the learned consultant has referred to the Table-I of the Show Cause Notice (para 6.3) wherein the average import price for month of March-April-May-June-2015 for Pre-painted Steel Sheets from China (0.47mm thickness) and have compared it with average import price for “Galvanized” pre-painted steel Sheets from China (0.47mm thickness). The learned consultant has stated that proper course would have been to take the value declared by the noticee and compare the same with contemporaneous data. It is has been stated that the relevant rule does not allow for averaging out of the quantity as has been done in the Show Cause

Notice. The learned consultant has bluntly stated that the authorities did not have minimum courtesy to show authenticity, accuracy and details of value used for making comparison. The copies as evidence has also been not made available to the noticee nor the same have been made the part of relied upon documents. It has been proffered that valuation data used for rejection & subsequent re-determination of value based on similar goods are un-authentic & un-reliable. It is stated that differential duty has been calculated in a haphazard manner without following the provisions of Valuations Rules.

6. I focus my attention to the para 8.4 of the Show Cause Notice where the opening lines states that "Accordingly, import data of similar goods retrieved from EDI System 1.5". The details are said to be given in Table-III of the SCN. I find that the Table-III gives following columns:

The Bill of Entry No., the description of Imported item (size & Grade as per MTC), Name of the Exporter, Quantity in MT, Assessable value per MT, Re-determined value per MT, Assessable value, Re-assessed value, Differential A.V. and Differential duty in Rupees.

At the end of the Table-III, it is stated that total assessable value of 30 Bill of Entry is Rs.16,45,63,883/-, Re-determined value = Rs.17,90,13,436/-, Duty Paid = Rs.5,24,31,209/-, Re-determined duty =Rs.5,70,61,745/- & Duty difference =Rs.46,60,537-.

I tried to find out the basis for re-determining the value. I do not find any contemporaneous or otherwise, Bill of entry, invoice of china or any other country of origin being furnished or cited as a basis for re-determining the assessable value in the whole Show Cause Notice. In fact there is no evidence at all cited for re-determining the assessable value. At the bottom of Table-III, the following has been stated:

"In view of the above table, it may be noted that:

(i) The grades of the imported goods and goods compared with are identical

(ii) The sizes (thickness/width) of the imported goods are also very similar.

(iii) The country of Origin of goods is also same, i.e., China.

(iv)The Country of Export is also same i.e. China.

(v) The quantity of imported goods are less than quantity of the goods compared with (there is always more discount available or more quantity than the less quantity)"

I find that conclusion drawn are a mere eye wash & has no substance as no basis for re-determination of value is at all disclosed anywhere in the text of Show Cause Notice. I agree with the contention of the learned consultant that

the basis on which valuation has been done is not at all disclosed. Hence, I hold that there is no cause to reject the declared value under rule 12(1) and 12(2) (iii) (a), (d) and (e) of the Customs Valuations (Determination of Value of Imported Goods) Rules, 2007.

I also hold that there is absolutely no legally sustainable evidence disclosed to justify the re-determination of the Assessable Value in terms of Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007.

In fact I hold that no evidence at all is disclosed for re-determination of assessable value. Since, I find that there is no willful mis-statement, no suppression of facts in case of declared description as the grade of imported sheets JISG 3312 is to be treated as a part of description and that there is no basis for rejection of the declared value under rule 12(1) and rule 12(2)(iii) (a), (d) and (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and no evidence at all is disclosed for re-determination of the assessable value under rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. I am constrained to drop the proceedings under impugned Show Cause Notice against both the noticees. Hence, I pass the following order.

ORDER

I drop the proceedings proposed vide Show Cause Notice F. No. S/43-31/SIIB/INV/CHM/2015-16 date 10.07.2017 issued to M/s. Zhongtu India Pvt. Ltd., Near Dwarka Secor-1, Police Post Dwarka, New Delhi (now Allfine Industries Pvt. Ltd., 120/6 and 121/10/2, near Azad Factory, Mundka, New Delhi) and Shri Sandeep Kumar, Director of M/s. Zhongtu India Pvt. Ltd., Sec-18 A, Kargil Vijay Veer Aawas, Flat No-254, Dwarka, New Delhi-110075.



(Prashant Kaduskar) 31/11/18

Additional Commissioner,
Custom House, Mundra

To

- (i) M/s Zhongtu India Pvt.Ltd.
Rz-C-104, Mahavir Nagar
Near Dwarka Secor-1, Police Post
Dwarka, New Delhi-110045.

NOW

M/s. Allfine Industries Pvt. Ltd.,
120/6 and 121/10/2,
Situating near Azad Factory,
Mundka, New Delhi - 110 041

- (ii) Shri Sandeep Kumar
Sec-18 A, Kargil Vijay Veer Aawas,
Flat No.-254, Dwarka, New Delhi-110075.

C/o M/s. Allfine Industries Pvt. Ltd.,
120/6 and 121/10/2,
Situating near Azad Factory,
Mundka, New Delhi - 110 041

Copy to:

1. The Principal Commissioner, Custom House Mundra.
2. The Deputy Commissioner (RRA), Custom House Mundra.
3. The Deputy Commissioner of Customs (SIIB), Custom House, Mundra.
4. The Deputy Commissioner of Customs, Group IV, Custom House, Mundra.
- ✓ 5. The Deputy Commissioner (EDI).
6. Guard file.