ALO Law Office- IDT Tax I Arbitration I Litigation

Date: 19.06.2025

CESTAT Ahmedabad- COOs were not proven to be invalid or fake

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT) Ahmedabad has set aside the demand for anti-dumping duty on Alfakrina Exports, affirming the legal sanctity of Certificates of Origin under preferential trade agreements. The decision underscores the importance of procedural compliance when questioning the origin of goods in the context of international trade.

Background

Alfakrina Exports had imported five consignments of PVC Sheeting Flex Banners from Malaysia, backed by Certificates of Origin (COO) issued by the Malay Chamber of Commerce. The goods were cleared through Customs at Mundra Port under the concessional duty benefit provided under Notification No. 53/2011-Cus dated 01.07.2011, pertaining to imports from Malaysia.

However, the Revenue alleged that the goods were actually of Chinese origin, citing Bills of Lading showing prior movement from Shanghai to Malaysia. On this basis, anti-dumping duty under Notification No. 82/2011-Cus dated 25.08.2011 was imposed, ignoring the COO furnished by the appellant.

Tribunal's Observations

- **Authenticity Not Disputed**: The COO issued by the designated authority in Malaysia was not proven to be fake or invalid.

- **Violation of Rule 9**: The Revenue failed to initiate the mandatory verification process under Rule 9 of the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between India and Malaysia) Rules, 2011, before rejecting the COO.

- **Precedent-Based Reasoning**: CESTAT relied on multiple decisions including *BDB Exports Pvt. Ltd.*, *R.S. Industries (Rolling Mills) Ltd.*, and *MJ Gold Pvt. Ltd.*, reiterating that Indian authorities cannot unilaterally disregard COOs issued by competent authorities of exporting countries.

- **Selective Application Faulted**: The Tribunal found that alleged discrepancies related only to two consignments. The remaining three were wrongfully denied benefits without any contrary evidence.

Legal Implication

This ruling fortifies the principle that customs authorities cannot bypass bilateral and multilateral rules governing international trade by merely relying on logistical documents like Bills of Lading. The Tribunal emphasized that only the designated issuing authority can be approached for verification, and until a COO is formally invalidated, it must be honored.

Conclusion

The decision is a reaffirmation of due process in cross-border trade compliance. It protects genuine importers from arbitrary reassessment and preserves the credibility of preferential trade frameworks such as the India-Malaysia FTA.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Ahmedabad

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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 12575 of 2018- DB

(Arising out of OIA-MUN-CUSTM-000-APP-084-18-19 dated 19/06/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Alfakrina Exports **.....Appellant**
104-105 Guru Raksha Complex,
Virani Chowk, Tagore Road,
Rajkot, Gujarat

VERSUS

C.C.-Mundra **.....Respondent**
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat- 370421

APPEARANCE:
Shri Vikash Mehta, Consultant for the Appellant
Shri, Tara Prakash, Deputy Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. 11759/2023

DATE OF HEARING: 23.06.2023
DATE OF DECISION: 23.08.2023

RAMESH NAIR

The brief facts of the case are that the appellant imported PVC Sheeting Flex Banner (in rolls) of Malaysian origin and filed a total of 05 bills of entry with Custom House, Mundra. The details of Bills of Entry are (i) 7848365 dated 04.09.2012 (ii) 8226047 dated 16.10.2012 (iii) 8405328 dated 05.11.2012 (iv)8697506 dated 07.12.2012 and (v) 8697507 dated 07.12.2012. They also claimed benefit of concessional rate of duty meant for goods imported from Malaysia in terms of Notification No. 53/2011-Cus dated 01.07.2011. The goods were shipped from Port Kelang in Malaysia. The Certificate of Origin issued by Malay Chamber of Commerce Malaysia certified that goods were produced in Malaysia.

1.2 The department alleged on the basis of Bills of Lading received from Shipping Line that goods covered by Bills of Entry Nos. at Sl. Nos. (iv) & (v) were imported into India under Bills of Lading No. PKGMUN23764 and PKGMUN23765 both dated 23.11.2012 showing port of loading as Port Kelang (for Mundra) were the same as those loaded earlier from Shanghai for Port Kelang under Bills of Lading Nos. FMPL/SHA/PKG/1211006 and FMPL/SHA/PKG/1211006A both dated 05.11.2012. For the remaining 03 bills of entry, there is no such evidence. Anti-Dumping duty is demanded under Notification No.82/2011-Cus dated 25.08.2011 by treating the goods covered by all 05 bills of entry of Chinese origin, by brushing aside the Certificate of origin produced by the appellant.

2. Shri Vikash Mehta, Learned Consultant appearing on behalf of the appellant submits that the certificate of origin showing the goods of Malaysian origin has not been proved as fake or not genuine. Therefore, merely on the basis of bill of lading issued by shipping line. It cannot be concluded that the goods are not of Malaysia origin. He refers to Rule 9 of Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of The Republic of India And Malaysia) Rules 2011.

2.1 He submits that if there is any reasonable doubt the customs authority of the importer country is required to make a request to the issuing authority of the exporting country to perform retroactive check regarding authenticity of the certificate of origin or as to the accuracy of the information regarding the true origin of the goods in question. However, this mandatory provision has not been followed, therefore merely on the basis of the bill of lading the allegation that the goods is of the China origin cannot be sustained.

2.2 He submits that even in case of any doubt the departmental officer cannot sit as an Adjudicator over the certificate of origin issue by the designated authority, that certificate of origin cannot be questioned on the basis of statements of the importers and after establishing by following the procedure the certificate origin needs to be cancelled, which was not followed by the department in the present case, in support of submission he placed reliance on the following judgments:

- M/s. BDB Exports Pvt. Ltd., 2017 (347) ELT 662 (Tri.-Kol)
- M/s. R. S. Industries (Rolling Mills) Ltd., 2018 (359) ELT 698 (Tri.-Del.),
- M/s. MJ Gold Pvt. Ltd., 2022 (10) TMI 292 - CESTAT NEW DELHI,

3. Shri Tara Prakash, Learned Deputy Commissioner (AR), appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the record. In the present case undisputed fact is that the proper authority i.e. Malay Chamber of Commerce Malaysia has issued the certificate of origin. The authenticity of the certificate was not proved to be wrong or there is no case that the certificate of origin is fake. We do agree with the submission of Learned counsel that in case of any reasonable doubt the procedure prescribed under Rule 9 of Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Government of the Republic of India and Malaysia) Rules 2011 needs to be complied with. For ease of reference the said Rule 9 of Rules 2011 is reproduced below:

> *"9. **Direct consignment**. - Originating goods shall be deemed to be directly consigned from the territory of the exporting Party to the territory of the importing Party if,-*
>
> *(a) The goods are transported without passing through the territory of any non-Party; or,*

(b) The goods are transported through the territory of any non-Party where,-

(i) The transit entry is justified for geographical reasons or transport requirements;

(ii) The goods have not entered into trade or consumption in the territory of such non-Party;

(iii) The goods have not undergone any operation in the territory of such non-Party other than unloading and reloading or any operation required to keep the goods in good condition; and,

(iv) The goods have remained under the control of the customs authority of such non-Party."

From the above rule it is mandatory that in case of any doubt about the authenticity of the certificate of origin. The Customs Authority of Government of India must request the Issuing Authority i.e. in the present case the Malay Chamber of Commerce Malaysia to check the authenticity of the certificate of origin.

4.1 We find that the department, when made an allegation about the country of origin did not follow the procedure prescribed under Rule 9 of Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and Malaysia) Rules 2011. Therefore, merely on the basis of the bill of lading whereby, it was inferred that the goods were originated from China cannot be accepted.

4.2 Moreover, the discrepancy was noticed only in respect of bill of lading related to 2 certificate of origin. Therefore the allegation in respect of other 3 certificates of origin is without any basis. Under the identical scheme of import of goods based on certificate of origin this tribunal in the case of M/s. BDB Exports Pvt. Ltd (supra) has taken the following view:

"4. Heard both sides and perused the records of the case. The issue involved in the present appeal is whether the main appellant is eligible to avail partial exemption under Notification No.105/99-CUS dated 10.08.1999 when read with SAPTA Rules. As per the first Proviso to this Notification, the Assistant Commissioner/Deputy Commissioner/Joint Commissioner has to be satisfied that imported goods are in accordance with the

Customs Tariff (Determination of Origin of Goods under the Agreement on SAARC Preferential Trading Arrangement) Rules, 1955- [SAPTA Rules]. As per Rule 4 of the SAPTA Rules read with its Schedule even products processed in the member countries are eligible for concessions under SAPTA Rules when the base goods are not produced/manufactured in the contracting countries. The only requirement under these Rules is that a certification of origin has to be produced for availing concessions as issued by the designated authority of Govt. of exporting contracting state and notified to the other contracting states in accordance with the certification procedures mentioned in the form annexed to SAPTA Rules. Required certificates of origin with respect to imported goods were furnished by the appellant where percentage of value addition as per SAPTA Rules was also indicated. Adjudicating authority has not accepted the value addition indicated in the certificate of origin but has gone with the investigation indigenously to allege that value addition cannot be to the extent claimed by the Appellant and also that activities undertaken by the supplier of cloves does not amount to processingof cloves. It is observed from various provisions of SAPTA Rules and Notification No.105/99-Cus dated 10.08.1999 that there is no discretion or power with the Customs authorities to reject the certificate of origin given by the concerned contracting state. Para 9 of the same Schedule does give power to the contracting states to review/modify the said Rules.

4.1 It is also observed that Hon'ble Apex Court in the case of Zuari Industries Ltd. v. CCE & Cus (Supra) held as follows:-

> *"9. Firstly, on the facts we find that the assessee had given to the Sponsoring Ministry its entire Project Report. In that report they had indicated that for the expansion of the fertilizer project they needed an extra item of capital goods, namely, 6MW Captive Power Plant. In their application, the assessee had made it clear that the fertilizer project was dependant on continuous flow of electricity, which could be provided by such Captive Power Plant. Therefore, it was not open to the Revenue to reject the assessees case for nil rate of duty on the said item, particularly when the certificate says so. In the judgment of this Court in the case of Tullow India Operations Ltd. (supra), this Court held that essentiality certificate must be treated as a proof of fulfilment of the eligibility conditions by the importer for obtaining the benefit of the exemption notification. We may add that, the essentiality certificate is also a proof that an item like Captive Power Plant in a given case could be treated as a capital goods for the fertilizer project. It would depend upon the facts of each case. If a project is to be installed in an area where there is shortage of electricity supply and if the project needs continuous flow of electricity and if that project is approved by the Sponsoring Ministry saying that such supply is needed then the Revenue cannot go behind such certificate and deny the benefit of exemption from payment of duty or deny nil rate of duty. To the said effect is the judgment of the Calcutta High Court in the case of Asiatic Oxygen Ltd. (supra) in which it was held that the object behind the specific Heading 98.01 in Customs Tariff Act, 1975 was to promote industrialization and, therefore, the heading was required to be interpreted liberally. It was further held that, once an essentiality certificate was issued by the Sponsoring authority, it was mandatory for the Revenue to register the contract."*

4.2 Karnataka High Court in the case of Yellamma Dasappa v. Commissioner of Customs, Bangalore (supra) also observed as follows:-

> *"9. A valid certificate has been issued and the said certificate, even as on date, has not been withdrawn or cancelled for any alleged violation of the condition by the appellant. Unless the said certificate is cancelled, the Customs Authorities cannot impose customs duty. The seizure of the equipment is only a consequential act that would follow the cancellation of the certificate issued in favour of the appellant. So long as the certificate is not cancelled, the respondents could not, in our opinion,*

have initiated seizure proceedings in the case on hand. Petitioner-appellant was sent only a questionnaire and the said questionnaire has been answered by the appellant herein. No further action has been taken by the respondents. The Director General of Health Services has also not issued any cancellation of certificate as on date. In these circumstances, we are clearly of the view that without withdrawing or cancelling the certificate already issued, the present seizure cannot stand. Therefore we hold that the seizure effected by the respondents is not in accordance with law. The impugned order of the learned Single Judge, in these circumstances, requires to be set aside and accordingly the same is set aside."

4.3 CESTAT, Delhi in the case of Dhar Cement Ltd. vs.- CCE Indore(Supra) after relying upon case laws of Supreme Court and Karnataka High Court, held as follows:-

"7. We have heard both sides and examined the appeal records. This is the third round of litigation in the present case. The issue involved is the installed capacity of the appellant vis-`-vis their eligibility to Notification Nos. 24/91 and 5/93-C.E. The concession of notification is available when the installed capacity is not exceeding 1,98,000 T.P.A. It is admitted fact that the Director of Industries, Madhya Pradesh, who is designated as a competent authority in the Notification itself has more than once certified the installed capacity of the appellant to be 1,98,000/- T.P.A. As observed by the Hon'ble Supreme Court in normal circumstances such a certificate is to be acted upon. The Hon'ble Supreme Court directed this Tribunal to examine the various material relied on by the Revenue to contest the appellant's claim for exemption. We perused of the impugned order which was passed after the specific direction of this Tribunal to approach the competent authority for re-examining all the facts, material, evidence, furnished by both the sides to certify the installed capacity. As per the direction of this Tribunal the Director of Industries was addressed by the Adjudicating Authority on 5-9-2002 along with copies of 11 documents (Para 12 of the impugned order) which are relied upon by the Revenue to contest the correctness of certificate issued by the competent authority. In response, the Commissioner of Industries vide his letter dated 17-6-2003 categorically stated that the installed capacity of the appellant unit is 1,98,000 T.P.A. during the impugned period. He also observed that with reference to the various evidences submitted by the Revenue his office is in agreement with the clarification given by the appellant that their annual installed capacity was 1,98,000 M.T. and they were capable to produce 25% extra, which comes to 2,47,500 T.P.A., for which there was no restriction from the Government end. We have noted that all the evidences available with the Department have been submitted to the Commissioner of Industries who reiterated the certificate already issued. In spite of such confirmation by Commissioner of Industries, Madhya Pradesh, the original authority examined the issue of appellants' eligibility and held that the appellants have deliberately misdeclared the installed capacity to the Central Excise Department to avail the concessional rate of duty under Notification No. 24/91. The Original Authority observed that the very basis of installed capacity certificate is not correct especially when the capacity of individual machinery/equipment and the various other documents of the appellants themselves suggest that installed capacity of their plant was much more than 1,98,000 T.P.A. Accordingly, he held the appellant is not eligible for the concession. We find that while coming to such conclusion he has acted apparently, as appellate authority with reference to certificate issued by the competent authority in terms of the notification. We find the original authority has no such legal powers to sit on judgment on the certificate issued by the competent authority designated by the Government. In case the certificate was obtained by misrepresentation or not presenting full facts the only option left to the Department is to approach the competent authority with all the evidences to modify/cancel the certificate issued already. The Department did approach not only the Director of Industries but also

Commissioner of Industries with all the evidences which were examined and the certificate was reiterated by the competent authority. As already noted, no other evidence was left to be considered."

4.4 In view of the above observations and the ratios laid down by the Courts certificates of origin produced by the Appellant cannot be discounted. There is no evidence on record that designated authority of Bangladesh under SAPTA Rules was maliciously involved with the supplier of cloves and the Appellant.

5. Adjudicating Authority has relied upon some indigenous sources to conclude that neither the imported goods are "processed cloves" nor the value addition to extent claimed is justified. Appellant asked for the cross examination of Shri Sunil Doletram Chhabria, Shri C.J.Jose, Dr.J.Chakraborty and Shri Pratab Chakroborty as per para-18 of Appellants reply dated 05.12.2005 to the show cause notice dated 26.08.2005. These facts have been duly reflected in the submissions of the main appellant in the Order-in-Original dated 28.02.2007 but the request of cross examination of the witnesses has been conveniently avoided by the Adjudicating Authority and no observations are given as to why request of the appellant for cross-examination is not acceptable. In the absence of cross examination the evidentiary value of the relied upon witnesses is lost. Secondly, Shri Doletram T.Chhabria is also an exporter and importer of spices whose business is threatened by concessional rate on cloves under SAPTA Rules. Being an interested party his statement otherwise also can also not be relied upon and used against the Appellants. It is observed from the SAPTA Rules that the concessions to member countries are as a result of commitments amongst the SAARC countries for enhancing, inter alia, the trade between the members contracting countries. Great trust is imposed under SAPTA Rules upon the designated authority of Govt. of the Exporting Contracting State as per para-7 of the Schedule to SAPTA Rules. To fulfill the commitments to SAARC nations a certificate of origin given by exporting contracting state cannot be scuttled by the department by conducting some local investigation creating confusion in extending the exemption benefits. As already observed a certificate of origin issued by the designated authority cannot be dishonoured unless cancelled by the same authority.

5.1. On the issue of processing of cloves it is the case of the department that minor activities done by the supplier will not make the goods as processed cloves and that such processed cloves come into existence only when oil is extracted from natural cloves. It is correctly argued by the Senior Advocate arguing on behalf of the Appellants that "exhausted cloves" or "spent cloves", from which clove oil has been extracted, will be cheaper than the natural cloves. If the argument of the department on this account is accepted then there cannot be value addition in the making of processed cloves and Notification No.105-99-CUS dated 10.08.1999 will become redundant, so far as concession/exemption to imported cloves from SAPTA countries is concerned.

5.1.1 On this issue of processing Gauhati High Court vide Order dated 30.08.1978, in the case of Chandreswar Singh v. State of Assam [1978 (42) STC 424 (Gau.)], held that when leaves and roots are removed from the onions then such onions become processed onions. Following observations were made by Hon'ble Gauhati High Court :-

"To put the argument of the learned counsel in nutshell, his contention is that a person who sells onion produced in Assam is not a dealer inasmuch as onion is neither manufactured nor made nor processed. On this assumption, contends the learned counsel, that levy of sales tax on onion imported from outside the State of Assam is hit by article 301 of the Constitution which deals with freedom of trade, commerce and intercourse throughout the territory of India. It is argued that article 304(a) cannot come to the rescue of the State for justifying this levy inasmuch

as article 304(a) provides that the legislature of a State may by law impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced. In support of this contention, the learned counsel has relied on State of Madhya Pradesh v. Bhailal Bhai, Firm A.T.B. Mehtab Majid and Company v. State of Madras and State of Rajasthan v. Ghasiram Mangilal. On the other hand, Mr.Goswami, learned counsel for the State of Assam, contends that there is no discrimination between onion imported from outside and onion grown in the State of Assam inasmuch as both are subjected to levy of sales tax. The argument in this connection has centred round the definition of the word 'processed'. It is urged by the learned counsel for the petitioner that onion cannot be processed inasmuch as it is not subjected to any mechanical process after it has been removed from the earth.

The word 'process' used as transitive word means according to Webster's New International Dictionary 'to prepare by or subject to treatment or process'. In Nilgri Ceylon Tea Co. v. State of Bombay, Shah, J. as he then was, observed as follows:

"The expression 'process' has not been defined in the Act. According to Webster's Dictionary 'process' means 'to subject to some special process or treatment, to subject (especially raw material) to a process of manufacture, development or preparation for the market, etc., to convert into marketable form, as livestock by slaughtering, grain by milling, cotton by spinning, milk by pasteurising, fruits and vegetables by sorting and repacking.'

(1) [1964] 15 S.T.C. 450 (S.C.); A.I.R. 1964 S.C. 1006.

(2) [1963] 14 S.T.C. 355 (S.C.); A.I.R. 1963 S.C. 928.

(3) [1969] 2. S.C.C. 710

(4) [1959] 10 S.T.C. 500.

According to Chambers's Twentieth Century Dictionary, 'process', interalia, means to prepare, (e.g., agricultural product) for marketing. In the Oxford English Dictionary, Vol.VIII, 'process' has been defined to mean besides other things, 'to preserve fruit, vegetable, etc. by some process'. In Webster's New International Dictionary, Vol.II, besides other things, process has been defined to mean 'a course of procedure, something that occurs in the series of actions'.

Now, it is common knowledge that the onion has its roots under the earth with coats of bulbs also and its leaves sprout on the surface of the earth. It is removed a long with the root, the leaves are dried up, and the main part which may be called bulb is exposed in the sunshine and after the leaves have dried up and have been removed from the bulb, the bulb, i.e., the edible round article is taken to the market for sale. From this it will be clear that the commodity is subjected to a treatment or process. It does not remain in the same condition in which it was when embedded to the earth or as initially harvested. Looked at from this angle, we are inclined to hold that onion is processed and that is why the onion grown in the State of Assam has been rightly subjected to a levy of sales tax by the Government."

5.2 In view of the above case law of Gauhati High Court department cannot sit as on Adjudicator over the certificate of origin given by the designated authority under SAPTA Rules. Only an appropriate authority of Bangladesh could have certified as to what could be the value addition, after satisfying about the nature of processing

activities done by the supplier and the extent of expenses incurred by such supplier in carrying out the activities of cleaning, handling, storage, sorting, packing etc.."

B) In the case of R. S. Industries (Rolling Mills) Ltd. (supra) similar view was expressed by the coordinate bench of this Tribunal, the relevant part of the order is reproduced below:

"5. We have heard both the sides and perused the appeal records. We note that the denial of exemption, as claimed by the importer, is on the ground that the value addition in Sri Lanka fall below 35%. We note that the certificates of origin have been issued by Competent Authority of Sri Lankan Government. The same is not in dispute. We already note that the certificate were not recalled or cancelled by the issuing authority. The only ground for denial of exemption is, the Zinc Ingots value subjected to assessment by Sri Lankan customs appears to be low. For this, support was drawn from LME price. We note that assessment of import of ingots was made by Sri Lankan Customs. The same cannot be varied here. We find it is not open to counterpart in India to reassess the goods which are not imported into India.

6. In any case, para 38.3 of the impugned order refers to non-fulfilment of condition under Rule 7(a) of Origin Rules. Reliance was placed on reports given by Sri Lankan customs dated 31-12-2004, 8-2-2005 and 5-4-2005 to conclude that the domestic value addition is not fulfilled. We have perused all the three reports which are on record. We note that none of these reports by Sri Lankan customs give any indication about the value addition not being fulfilled by the Sri Lankan supplier. To this extent, there is no factual support for the observation made in the impugned order. Further, we note that the valuation of Zinc Ingots as ascertained by the impugned order has no relevance to question the certificate issued by the Competent Authority of Sri Lankan Government. As such, we find the non-fulfilment of condition under Rule 7 (a) could not be invoked by the Original Authority, in the facts of this case. Further, it is also recorded by the Original Authority that the Director of the importing Indian company in the statements gave details which supported the allegation of incorrect data submitted by the Sri Lankan supplier. We note that there is no such admission by the Director in his statements. Even otherwise, we note that certificate of origin and the data submitted to get such certificates cannot be questioned based on statements of the importers. We find no record to the effect that the country of origin certificates issued by the Sri Lankan Government has been questioned by the Indian Authorities and follow up after import was done in order to cancel or recall the same. We note that the issue regarding country of origin certificate and questions of bonafideness was discussed in the bilateral meeting of working group between the two countries on 5-6-2002 it was agreed that no detention or hold up of cargo is to be ordered on the question of bonafideness of certificates. Verification, if any, can be done post-facto with the concerned local nodal focal points at the respective headquarters. This much has been recorded in the letter dated 5-10-2004 of Department of Commerce, Government of Sri Lanka addressed to Commissioner of Customs (Imports), JNPT."

C) This Tribunal in the case of M/s. MJ Gold Pvt. Ltd. (supra) dealing with the similar issue, has passed the following order:

5. Having heard the rival contentions, it is observed that vide the order under challenge the appellant is denied the duty exemption benefit for importing gold

jewellery from Indonesia, despite Indonesia being the country in Appendix of the Notification No. 046/2011 dated 01.06.2011 which exempts the imports from Indonesia to such amount of duty as is mentioned in 4 th column of said notification. Foremost the Notification is perused. It is observed that the Notification exempts the goods of the description as is specified in Column 3 of the Table appended thereon and falling under Chapter sub heading or tariff item of the first schedule to the Customs Tariff Act, 1985 as is specified in the corresponding entry in column 2 of the said table, from so much of the duty of customs leviable thereon as is in excess of the amount collected at the rate specified in column 4 of the said table, when the goods imported into the Republic of India when the goods from a Country listed in Appendix I. As already observed above, Indonesia is one of the country from Appendix I.

6. Further perusal of the Notification shows that such benefit is available to the importer if the importer proves to the satisfaction of the Deputy Commissioner or Assistant Commissioner of Customs, or as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin from the countries as mentioned in Appendix I or Appendix II, as the case may be], in accordance with provisions of the Customs Tariff Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (NT), dated the 31st December 2009.

7. I further observe that this Notification is an amendment of earlier Notification No. No. 189/2009-Customs (NT), dated the 31st December 2009. Rule 13 thereof reads as follows:

> *"13. Certificate of Origin.- Any claim that a product shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin as per the specimen in the Attachment to the Operational Certification Procedures issued by a Government authority designated by the exporting party and notified to the other parties in accordance with the Operational Certification Procedures as set out in Annexure III annexed to these rules."*

Perusal of the said Annexure III condition No. 7 therein is with respect to the issuance of said certificate of origin. It reads as follows:-

> *"7. ISSUANCE OF AIFTA CERTIFICATE OF ORIGIN*
>
> *(a) The AIFTA Certificate of Origin shall be in International Organization for Standardisation (ISO) A4 size, and white paper in conformity with the specimen as in the Attachment to these Operational Certification Procedures. It shall be made in English. The AIFTA Certificate of Origin shall comprise one (1) original and three (3) copies. Each AIFTA Certificate of Origin shall bear a reference number as given separately by each place or office of issuance.*
>
> *(b) The original copy shall be forwarded, together with the triplicate, by the exporter to the importer. Only the original copy will be submitted by the importer to the Customs Authority at the port or place of importation. The duplicate shall be retained by the Issuing Authority in the exporting party. The triplicate shall be retained by the importer. The quadruplicate shall be retained by the exporter.*
>
> *(c) In cases where an AIFTA Certificate of Origin is not accepted by the Customs Authority of the importing party, such AIFTA Certificate of Origin shall be marked accordingly in box 4 and the original AIFTA Certificate of Origin shall be returned to*

the Issuing Authority within a reasonable period but not to exceed two months. The Issuing Authority shall be duly notified of the grounds for the denial of preferential tariff treatment.

(d) In cases where an AIFTA Certificate of Origin is not accepted, as stated in paragraph (c), the Issuing Authority shall provide detailed, exhaustive clarification addressing the grounds for the denial of preferential tariff treatment raised by the importing party. The Customs Authority of the importing party shall accept the AIFTA Certificate of Origin and grant the preferential tariff treatment if the clarification is found satisfactory."

8. Apparently and admittedly, the Customs Authority while verifying the origin of goods had issued a questionnaire and denied the benefit on the ground that the complete questionnaire was not answered by the appellant creating a doubt about the Country of origin Certificate. The perusal of the condition No. 7 (c), as above makes it clear that in case of such doubt about the authenticity of Country of origin Certificate i.e. in case where the certificate of origin is not acceptable to the Customs Authorities of the importing country, then the certificate has to be returned back to the issuing authority that too within a reasonable period duly informing the grounds for the denial of preferential tariff treatment. Admittedly and apparently, the said procedure has not been followed by the Department. Though all the questions were not answered by the appellant but perusal of the questionnaire shows that the availability of information as was required under these questions was not feasible with the appellant. More so, appellant had handed over the original copy of Country of origin Certificate. The meaning of 'not answered the questionnaire' becomes utmost irrelevant in the light of Certificate of origin.

9. No inquiry as mandated by the Notification was conducted with respect to Country of origin Certificate which otherwise reveal that a Certificate has been issued by the Competent Authority of one of ASEAN country as mentioned under Appendix I of the Notification No. 46/2011 dated 01.06.2011. In the given circumstances, it was highly unacceptable that the Certificate should not have been accepted. Once all documents as required under Notification No. 046/2011-Cus dated 01.06.2011 have been provided by the importer and their authenticity has not been challenged by the verifying Customs officers nor got verified from the issuing authority, there is no reason for the said Customs officer to hold that said certificate is not genuine. Demand of duty based upon reassessment ordered is actually not sustainable. I draw my support from the decision of CESTAT Hyderabad Bench in the case of Commissioner of Customs, Hyderabad vs Riddi Siddhi Bullions Ltd. reported as [2017 (355) ELT 585 (Tri-Hyd)] wherein it was held that the Adjudicating Authority cannot go beyond the provisions of Notifications that too to come to a conclusion based upon the assumptions and presumptions that the gold mined by the exporting country could not have been used by the supplier / manufacturer for producing the imported gold jewellery. It was held that the Notification provides for detailed verification process in case of reasonable doubt, it is not the case of the department that information was inconsistent with the certificate. In the absence thereof, it was held that the Adjudicating Authority could not have gone beyond the provisions of Notification.

10. I finally observe that the impugned Notification is a kind of preferential trade arrangement between States of Association of Southeast Asian Nations (ASEAN) and the Republic of India in order to facilitate free movement of trade. If the exemption sought under the applicable rules is denied on one or the other pretext that too based merely on assumptions and presumptions, it will hamper the free movement of trade between agreeing nations. Same is highly uncalled for and would rather render the entire exemption Notification otiose more so when on the face of the

record, the Certificate of Origin is otherwise not disputed. Above all, the substantial benefit as that of exemption from payment of duty shall not be denied merely on procedural lapse.

11. In view of the entire above discussion, the sole ground for denying the benefit of duty exemption despite the valid Country of origin Certificate is not sustainable. The order under challenge is therefore, hereby set aside. Consequent thereto, the appeal stands allowed.

From the above discussion and finding, which is supported by the afore-cited judgments, without checking the authenticity of the certificate of origin issued by Malay Chamber of Commerce, Malaysia. The certificate of origin cannot be discarded and on that basis benefit cannot be denied.

5. Accordingly, we are of the view that the impugned order is not sustainable. Hence, the same is set aside, appeal is allowed.

(Pronounced in the open court on 23.08.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha