ALO Law Office- IDT Tax I Arbitration I Litigation

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CESTAT Hyderabad Upholds Validity of Malaysian Certificates of Origin

The Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Hyderabad, recently delivered a significant judgment in a series of appeals concerning the import of cocoa powder under preferential trade agreements. This decision, pronounced on August 22, 2025, sheds light on the interpretation of Free Trade Agreements (FTAs), the validity of Certificates of Origin, and the application of extended limitation periods under customs law. Here's a detailed breakdown of the case and its implications.

Background of the Case

The appellants—M/s Malta Exports, M/s Ravi Foods Pvt Ltd, M/s Pahal Foods Pvt Ltd, M/s Kamala Consumer Care Pvt Ltd, and M/s Dukes Consumer Care Ltd—imported cocoa powder from Malaysia, claiming concessional duty benefits under Notification No. 46/2011-Cus and Notification No. 53/2011-Cus. These benefits were based on Certificates of Origin issued by the Malaysian Ministry of International Trade and Industry (MITI), certifying that the Regional Value Content (RVC) of the cocoa powder exceeded 35% of the Free on Board (FOB) value.

However, the customs authorities issued show cause notices (SCNs) alleging that the RVC requirement was not met, relying on a 2014 Board letter. The authorities demanded differential duty, imposed penalties, and denied the exemption benefits. Aggrieved by these orders, the appellants approached the tribunal.

Key Issues Addressed

1. **Validity of Certificates of Origin**: The appellants argued that the Certificates of Origin issued by MITI were valid and conclusive proof of compliance with the RVC requirement. They contended

that the customs authorities failed to provide evidence to disprove the authenticity of these certificates.

2. **Verification Procedures**: The tribunal noted that the customs authorities did not conduct independent verification of the certificates as required under the ASEAN-India Free Trade Agreement (AIFTA) rules. Instead, the denial of benefits was based on assumptions and unrelated investigations.
3. **Extended Limitation Period**: In some cases, the SCNs were issued beyond the normal limitation period. The tribunal emphasized that extended limitation under Section 28(4) of the Customs Act could only be invoked in cases of deliberate suppression or misstatement, which was not evident in this case.

Tribunal's Observations and Ruling

1. **Certificates of Origin Are Conclusive**: The tribunal held that the Certificates of Origin issued by MITI were valid and could not be disregarded without concrete evidence. It relied on precedents where courts had upheld the authenticity of such certificates unless proven otherwise.
2. **No Independent Verification by Customs**: The tribunal criticized the customs authorities for failing to verify the certificates with the Malaysian authorities. It reiterated that assumptions or unrelated investigations could not form the basis for denying benefits.
3. **Time-Barred SCNs**: For appeals where SCNs were issued beyond the normal limitation period, the tribunal ruled that the extended period could not be invoked as there was no evidence of suppression or misstatement by the appellants.
4. **Relief Granted**: The tribunal allowed all appeals, setting aside the orders of the adjudicating authority. It also granted consequential relief to the appellants.

Implications of the Judgment

This judgment has far-reaching implications for importers and customs authorities:

1. **Strengthening the Role of Certificates of Origin**: The decision reinforces the importance of Certificates of Origin as conclusive proof under FTAs. Customs authorities must provide concrete evidence to challenge their validity.
2. **Fair Application of FTAs**: The ruling ensures that importers can claim benefits under FTAs without undue harassment, provided they comply with the prescribed rules.
3. **Limitation Periods**: The judgment underscores the importance of adhering to limitation periods and restricts the arbitrary invocation of extended periods without evidence of deliberate wrongdoing.
4. **Precedent for Future Cases**: The tribunal's reliance on past judgments and its detailed reasoning provide a strong precedent for similar disputes in the future.

Conclusion

The CESTAT's decision in these appeals is a landmark ruling that upholds the principles of fairness and transparency in customs adjudication. It highlights the need for customs authorities to follow due process and base their decisions on evidence rather than assumptions. For importers, this judgment is a reassurance that compliance with FTA rules and submission of valid documents will protect their rights.

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 Hyderabad

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CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

Division Bench – Court No. – I

Customs Appeal No. 30219 of 2020

(Arising out of Order-in-Original No.HYD-CUS-18-COM-19-20 dt.31.12.2019 passed by Principal Commissioner of Customs, Hyderabad)

M/s Malta Exports
B-503, Sagar Garden, LBS Marg,
Mulund West, Mumbai – 400 080 **.....Appellant**

VERSUS

Principal Commissioner of Customs
Hyderabad - Customs
Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004 **.....Respondent**

with

Customs Appeal No. 30265 of 2020

(Arising out of Order-in-Original No.HYD-CUS-13-COM-19-20 dt.17.12.2019 passed by Principal Commissioner of Customs, Hyderabad)

M/s Pahal Foods Pvt Ltd
7-4-112/2, Sy.No.74/P, 75/P,
Kattedan, Hyderabad – 500 077 **.....Appellant**

VERSUS

Principal Commissioner of Customs
Hyderabad - Customs
Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004 **.....Respondent**

with

Customs Appeal No. 30266 of 2020

(Arising out of Order-in-Original No.HYD-CUS-08-COM-19-20 dt.06.12.2019 passed by Principal Commissioner of Customs, Hyderabad)

M/s Ravi Foods Pvt Ltd
7-4-112/1, Kattedan, Madhuban Colony Road,
Hyderabad, Telangana – 500 077 **.....Appellant**

VERSUS

Principal Commissioner of Customs
Hyderabad - Customs
Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004 **.....Respondent**

with

Customs Appeal No. 30283 of 2020

(Arising out of Order-in-Original No.HYD-CUS-09-COM-19-20 dt.06.12.2019 passed by Principal Commissioner of Customs, Hyderabad)

M/s Kamala Consumer Care Pvt Ltd
Sy.No.160, Kothur (Village & Mandal),
Rangareddy Dist., Telangana – 509 228 **.....Appellant**

VERSUS

Principal Commissioner of Customs
Hyderabad - Customs
Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004 **.....Respondent**

and

Customs Appeal No. 30319 of 2020

(Arising out of Order-in-Original No.HYD-CUS-10-COM-19-20 dt.17.12.2019 passed by Principal Commissioner of Customs, Hyderabad)

M/s Dukes Consumer Care Ltd
Plot No.45, SEIE, Kattedan,
Hyderabad, Telangana – 500 077 **.....Appellant**

VERSUS

Principal Commissioner of Customs
Hyderabad - Customs
Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004 **.....Respondent**

Appearance:-
Shri T. Jagapathi Rao, Consultant & Shri N.A.J.V. Shaymbabu, Advocate for the Appellants.
Shri V.R. Pavan Kumar, AR for the Respondent.

Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30313-30317/2025

Date of Hearing: 07.05.2025
Date of Decision: 22.08.2025

[Order per: ANGAD PRASAD]

M/s Malta Exports, M/s Ravi Foods Pvt Ltd, M/s Pahal Foods Pvt Ltd, M/s Kamala Consumer Care Pvt Ltd & M/s Dukes Consumer Care Ltd (hereinafter referred to as the appellants) have come in appeals against five OIOs, passed by the Principal Commissioner of Customs (Adjudicating Authority).

2. The brief facts of the case are that the appellants imported Cocoa powder from M/s Guaan Chong Cocoa and M/s JB Cocoa, Malaysia and claimed clearance with concessional rate of duty in terms of Notification No.46/2011-Cus dt.01.06.2011 read with ASEAN and the Republic of India Rules, 2009 notified under Notification No.189/2009-Cus9NT) dt.31.12.2009 and Notification No.53/2011-Cus dt.01.07.2011 read with Preferential Trade Agreement between the Governments of the Republic of India and Malaysia Rules, 2011 notified under Notification No.43/2011-Cus(NT) dt.01.07.2011 on the basis of the Country of Origin Certificates issued by the Ministry of International Trade and Industry, Malaysia (MITI) certifying in each of the Certificates that the Regional Value Content (RVC) in the cocoa powder exported to the appellants was more than 35% of the FOB value. The customs authorities examined the goods, verified the Country of Origin Certificates and allowed the clearance with concessional assessment. Thereafter, SCN was issued proposing to deny the concessional assessment under Notification No.46/2011 and 53/2011 alleging that the RVC in the cocoa powder imported by the appellants is less than 35% of the FOB value prescribed for eligibility for concessional assessment. The SCN was issued placing reliance on the Board's letter dt.07.05.2014. The SCN further demanded the differential amount of duty and imposed penalty. After due process, the adjudicating authority passed the impugned orders denying the benefit of exemption notifications and demanding duty with interest and imposing penalty. Aggrieved by the same, the appellants are in appeals against the said impugned orders passed by the adjudicating authority.

3. Learned Counsel for the appellants submit that the appellants claimed the benefit of the exemption notifications on the basis of the Country of Origin Certificates issued by the MITI, Malaysia certifying in each of the

certificates that the RVC in the cocoa powder exported to the appellants was more than 35% of the FOB value prescribed in the rules for eligibility of the concessional assessment. The Customs authorities have not proved with any evidence that the Country of Origin certificates were not genuine and not truthful. He further submitted that as per Rule 5 of the ASEAN and the Republic of India Rules, 2009 and the Trade Agreement between the Governments of India and Malaysia Rules, 2011, goods containing not less than 35% of RVC imported from Malaysia are eligible for concessional assessment. As per Rule 13 of the ASEAN and the Republic of India Rules, 2009 and Rule 14 of the Trade Agreement between the Governments of India and Malaysia Rules, 2011, the Country of Origin Certificate is accepted for Preferential Tariff Treatment. Therefore, the adjudicating authority was not correct in denying the notifications claimed by the appellants as they have complied with the provisions of the notification and also with Rule 14 of the Trade Agreement between the Governments of India and Malaysia Rules, 2011.

4. In respect of verification of Country of Origin Certificates, he submitted that the Commissioner and the adjudicating authority, who issued the SCN and passed the impugned OIOs respectively, denying the benefit of the concessional rate of duty did not cite any document or any other proof to establish that the Certificate of Origin issued for the imports made by the appellants were verified as per the above said Rules and found to be incorrect in any manner. Therefore, OIOs are baseless and arbitrary in this regard. In support of this contention, they have relied on the following judgments:-

a) RS Industries (Rolling Mills) Ltd Vs CCE, Jaipur-I [2018 (359) ELT 698 (Tri-Del)]
b) Minakshi Exports Vs CC, Jodhpur [2018 (359) ELT 689 (Tri-Del)]

5. Learned Counsel further submitted that in the case of any doubt about the correctness of the Country of Origin certificates produced by the appellants claiming clearance with concessional assessment/total exemption as per the relevant Rules, the department must verify the correctness of the Country of Origin certificates for each Bill of Entry. The outcome of the verification done for earlier imports cannot be the basis to allow the benefit

or to deny the benefit of the Notification. In support of this contention, they have relied on judgment of Hon'ble Madras High Court in the case of M/s Unik Trades Vs DRI, Chennai [2019 (367) ELT 353 (Mad.)].

6. As far as operational certification procedure is concerned, learned Counsel submitted that in the impugned OIOs, the adjudicating authority stated that Article 9 to 10 provides for method of verification of certificate of origin and after consideration, he came to the conclusion that the procedure prescribed is independent of each other. This contention is not correct on the ground that as per Article 9, the importing party may request the certificate issuing authority of the exporting party to perform retroactive check when it has reasonable doubt as to the authenticity of the certificate of origin or as to the accuracy of the information regarding the true origin of the goods in question or certain parts thereof. Article 10 stipulates that if the Customs authority of the importing party is not satisfied with the outcome of the retroactive check, it may, under exceptional circumstances perform a verification visit. From this it is clear that certificate cannot be rejected just by verification under Article 9 alone. In this connection, they have relied on the judgment of Hon'ble Delhi High Court in the case of Bullion and Jewelers Association Vs UOI [2016 (335) ELT 639 (Del.)].

7. He further submitted that invocation of extended period under section 28(4) is not tenable as refusal of providing 'cost data' by the foreign suppliers and the certificate issuing authority cannot be treated as suppression of information of facts by the appellants. The department has not cited any document to establish the allegation that appellants have mis-declared or suppressed the facts. In support of this contention, they have relied on the following judgments:-

a) Simplex Infrastructure Ltd Vs CST, Kolkata [2016 (42) STR 634 (Kol.)]
b) International Metro Civil Contractors Vs CST, Delhi [2019 (20) GSTL 66 (Tri-Del)]
c) Pushpam Pharmaceuticals Co. Vs CCE, Bombay [1995 (78) ELT 401 (SC)]

8. He further submitted that no demand can be issued under section 28 of the Customs Act, 1962 unless the assessment in the Bills of Entry is

modified in appeal under section 128 of the Customs Act. In support of this contention, they have relied on the following decisions:-

a) Anant Wines and Spirits Vs CC, Amritsar [2016 (342) ELT 419 (Tri-Chand)]
b) CC (Imports), Mumbai Vs Hindustan Gas and Industries Ltd [2006 (202) ELT 693 (Tri-Mum)]

9. As regards confiscation of goods under section 111(o) of the Customs Act, 1962, he submitted that goods were cleared and consumed and not available. Hence, the question of confiscation does not arise as held by Hon'ble Bombay High Court in the case of CC (Imports), Mumbai Vs Finesse Creation INC [2009 (248) ELT 122 (Bom.)]. Departmental appeal against this decision was dismissed by Hon'ble Supreme Court reported in [2010 (255) ELT A120 (SC)]. Applying the ratio of these judgments, the order passed confiscating the goods is not tenable. As regards penalty imposed under section 114A, he submitted that it may be imposed when larger period under section 28(4) was invoked by reason of collusion or any willful misstatement or suppression of facts as envisaged under the section. But in the present case, these ingredients are not found. Accordingly, penalty cannot be imposed. He further submitted that impugned OIOs passed by the adjudicating authority denying the benefit of notification without considering submissions made by the importer and the judgments cited, is a non-speaking order and is therefore, liable to be set aisde.

10. On the other hand, learned AR has reiterated the findings of the adjudicating authority in the impugned OIOs.

11. Heard both sides and perused the records.

12. The issue involved in all the appeals is common and therefore, these appeals are being taken up together for the purpose of disposal.

13. We find that the benefit of notification issued under FTA was denied by the Customs only on the ground that there was an intelligence that the condition of value addition of 35% in respect of cocoa powder supplied from Malaysia is not fulfilled. There is no evidence of department having conducted any independent verification on their own to establish that the

Certificate of Origin as that is the requirement under the Customs Tariff (Determinatin of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and Malaysia) Rules, 2011 and issued by concerned Malaysian authority is invalid or fabricated or wrongly issued. The procedure regarding claim of preferential tariff treatment and certificate of origin of goods are provided in the Annexure-III of these Rules.

14. The Coordinate Bench at Ahmedabad in the case of Shirazee Traders Vs CC, Mundra [Final Order No. A/12060/2023 dt.15.09.2023] observed as follows:

> *"The matter in this case pertains to import made by the appellants of cocoa powder which at the relevant time was covered under free trade agreement. The same as per certificate of origin produced before us was wholly obtained in Malaysia. The Customs Authority after going through the documents at Mundra port allowed clearance on 07.12.2014. In the subsequent investigation done by the department on the basis of a DRI communication in relation to some other exporters wherein it found that in their case, goods were exported from Ghana and at least 35% of material/manufacturing was of Ghana origin. Authorities therefore suspected those certificates to be incorrect and made reference to Malaysian authorities about the authenticity of the certificates issued in those cases. On verification, in those cases Malaysian Customs Authorities expressed their inability because of non disclosure of cost data by the manufacturer to authenticate those certificates. In the present instance, show cause notice has been issued and stands confirmed by lower authorities on the basis that what transpired in those cases might have happened in this case also. There is nothing on the record to show that in present instance, the certificate of origin was sent to Malaysian Customs Authority for verification or that the goods in any case were concerned with the same set of suppliers in Malaysia as well as Ghana."*

15. This decision has been followed in subsequent cases which are as follows:

a) D P Chocolates Vs CC, Mundra [Final Order No.11617-11619/2024 dt.23.07.2024]
b) M/s Malas Fruit Products Vs CC, Mundra [Final Order No.10975/2024 dt.01.05.2024]
c) M/s Goldsmith Food Products Vs CC, Mundra [2024 (5) TMI 144 – CESTAT Ahmedabad]

16. We also find that similar issue was the subject matter of adjudication before the Principal Commissioner of Customs (NS-I) and where vide OIO dt.31.07.2017, inter alia, he held that M/s Morde Foods Pvt Ltd were entitled

for benefit under Notification No.153/2009-Cus dt.31.12.2009 as superseded by Notification No.46/2011-Cus dt.01.06.2011 read with Notification No.189/2009-Cus (NT). In that case also reliance by the Department was placed on certain verifications done by Malaysian Authority against JB Cocoa Sdn. Bhd. and Guaan Chong Cocoa Manufacturer Sdn. Bhd., and they confirmed that cocoa powder imported from them had RVC greater than 35%. The relevant para of the Order, supra, is cited below:

> *"21.6 In view of the above mentioned evidences and facts, I find that there is not sufficient ground to reject the certificates of country of origin issued by statutory authorities/foreign governments as conclusive, more so when the exporting country's statutory authority has given their reverification for the RVC of the goods under dispute. After carefully considering the said facts on record, I believe that the genuine COO, issued by the statutory authority further supported and re-validated on the weight of verification visits in suppliers factories by the Malaysian authorities and on the basis of detailed investigation done by MITI by appointing independent auditor (confirming that goods are actually manufactured and the required value addition as per the Notification has been achieved) need to be accepted for the purpose of grant of Notification benefit. Also the fact that the Malaysian Authorities (MITI) have welcomed any probe by any investigation agency of Government of India into the matter and requested for sending officers to Malaysia for verification. I don't see any reason to deny the benefit as the investigation has not availed the opportunity of visiting the exporting party to clear the doubts/suspicion if there was any regarding the retroactive check conducted by the Malaysian Authority.*
>
> *21.7 I agree with the submissions of the notice MFPL that the courts in India have accepted certificates issued by statutory authorities/foreign governments as conclusive proof of evidence. I place reliance on the following decisions:*
>
> - *Sindhwani & Co. Vs CC, Amritsar [2009 (236) ELT 139 (Tri-Del)], wherein it has been held that it is not open to the Customs Authorities to differ from a CoO issued by a foreign government:*
>
> *"We have carefully considered the submissions from both sides. No reliable evidence has been produced that Pistachio (Pista kernel) imported by the appellants were from a country other than Afghanistan. Merely relying on opinion of some traders whose expertise has not proved will not be proper. Based on such report to ignore certificate of origin which has been duly confirmed to be genuine by the Embassy of Afghanistan will also not be proper. We are, therefore, of the considered view that the orders of the Commissioner (Appeals) cannot be sustained."*
>
> - *Union of India Vs Azadi Bacho Andolan [2003 (263) ITR 706 (SC)]*
>
> *"It is hereby clarified that wherever a Certificate of Residence is issued by the Mauritian Authorities, such Certificate will constitute sufficient evidence for accepting the status of residence as well as beneficial ownership for applying the DTAC accordingly."*

21.8 It is evidence from the SCN that while calculating the RVC and concluding it to be less than required 35% for the concession benefit available in notification, the DRI taken into account various inputs like labour, packing and other manufacturing cost, and the profit margin and relied upon various mechanism including prospectus available on the supplier company's website and articles available on internet and concluded the cost as 17% only. Also the production data of Malaysia for Cocoa is used to infer the availability of raw material cocoa available to supplier for manufacture of cocoa powder and butter. I believe that the said inference is loaded with so many infirmities as the website information is reflecting only the manufacturing cost for the production of the impugned goods where as raw material need not be part as raw material cost is separately mentioned in same website as 87.2%, 83% & 83% for the year 2009, 2010 & 2011 respectively. In view of the reverification of the COO certificate and the factory visits conducted by MITI and in light of detailed verification report submitted by the independent auditor appointed by MITI for the said purpose, I find that the issue of RVC is reasonably settled in exporter/supplier favour as MITI confirmed that the raw materials used in production of the finished products has fulfilled the 35% Regional Value Content (RVC) under the ASEAN India Free Trade Agreement (AIFTA). Hence, the presumption that the raw material have been procured from Non-ASEAN nations is not sustainable in the light of above said evidences and facts."

17. There is no dispute that import is from Guaan Chong Cocoa in this case and in other cases, imports have taken place from suppliers other than JB Cocoa and Guaan Chong Cocoa, where evidently no investigation has been made by either India customs or by Malaysian Authority.

18. Therefore, in view of the above judgments, since the facts and charges levelled in those cases are similar, the ratio of the above decisions is directly applicable in the instant case. Therefore, the issue is no longer res integra. Therefore, following the ratio in the judgments, supra, the impugned orders in the present appeals are not sustainable on merit itself.

19. In Appeal No.C/30219/2020, C/30265/2020 & C/30283/2020, SCN was issued beyond the normal period of limitations. The reasons given to invoke the longer period under section 28(4) were that the importer misdeclared the goods imported that they meet the requirements of notification and eligible for benefits thereunder. Appellants had submitted the concerned certificates before authority which they received from Malaysian Authorities. Therefore, there is no misstatement, misdeclaration or suppression of facts.

20. Hon'ble High Court of Calcutta in the case of Simplex Infrastructures Ltd (supra) held that "Suppression of facts - It can only mean non-disclosure

of correct information deliberately to evade payment of Service Tax - There must be element of fraud and dishonest motive before non-disclosure simpliciter can be called “suppression of facts” - There has to be positive, conscious and deliberate action intended to evade tax, for example, deliberate misstatement or suppression pursuant to query, in order to evade tax - Mere failure to disclose transaction and pay tax thereon or mere misstatement or mere contravention of law, is not sufficient for invocation of extended period of limitation.”

21. The Coordinate Bench at Ahmedabad in similar case of Global Exim Vs CC, Mundra [2024 (390) ELT 455 (Tri-Ahmd)] observed as follows:

> *“4. On careful consideration of the submission made by both the sides and perusal of record, we find that even though the appellant has made strong prima facie case on the merit but appeal can be disposed of on the threshold point of the time bar. We find that the certificate of origin was provided by the exporting Country i.e. Malaysia. For which the appellant have no control. It is Governmental Authority of exporting country who after consideration of various aspects of value addition issued country of origin certificate.*
>
> *4.1 The facts behind issuance of country of origin neither the appellant are aware of the fact nor they are legally supposed to know the same. At the time of filing the Bill of Entry the appellant have to submit the documents including the country of origin certificate which the appellant have scrupulously complied. If there is doubt in the mind of customs they could have issued show cause notice within the normal period of limitation, as per proviso to Section 28(4) of Customs Act. However, in the present case the show cause notice was issued beyond the normal period of limitation.”*

22. Therefore, except for Appeal No. C/30266/2020, all the remaining appeals are liable to be allowed on merits as well as on the ground of limitation and Appeal No. C/30266/2020 is liable to be allowed on merit only.

23. Accordingly, appeals are allowed with consequential relief, if any, as per law.

(Pronounced in the Open Court on 22.08.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Veda