AADRIKAA LAW OFFICES

(ALO) Your Own Law Office

www.aadrikaalaw.com

Aadrikaa Law Offices (ALO)- IDT Tax I Arbitration I Litigation

Date: 11.09.2025

CESTAT Mumbai Upholds Certificates of Origin for Gold and Diamond Imports from Thailand

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

The Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Mumbai, recently delivered a landmark judgment addressing the contentious issue of preferential duty claims on imports of gold and diamond-studded jewelry from Thailand. This decision, pronounced on August 29, 2023, has significant implications for importers, customs authorities, and international trade agreements.

Background of the Case

The appeals arose from disputes over the validity of preferential duty claims under Notification No. 85/2004-Cus dated August 31, 2004, which provides reduced customs duty rates for goods originating from Thailand. The importers had furnished Certificates of Origin (COO) issued by the designated authority in Thailand to claim these benefits. However, customs authorities questioned the authenticity of these certificates, alleging non-compliance with the "value addition" requirement stipulated under the Interim Rules of Origin.

The Directorate of Revenue Intelligence (DRI) conducted investigations, leading to orders demanding differential duties and imposing penalties under Sections 28, 114A, and 112 of the Customs Act, 1962. The importers challenged these orders, arguing that the certificates were valid and issued by the competent authority in Thailand.

Key Issues Addressed

1. **Validity of Certificates of Origin**: The primary contention was whether customs authorities could reject COOs issued by Thailand's designated agency. The appellants argued that these certificates are binding unless proven invalid through the institutional mechanism prescribed in the Interim Rules of Origin.
2. **Value Addition Requirement**: The notification mandates a minimum local value addition of 20% for goods to qualify as originating from Thailand. Customs authorities alleged that this threshold was not met, relying on domestic investigations and statements from importers.
3. **Role of Customs Authorities**: The appellants contended that customs officials cannot override COOs without following the prescribed retroactive verification process involving the exporting country's designated authority.

Tribunal's Observations

The Tribunal emphasized the sanctity of Certificates of Origin issued by the designated authority in Thailand. It noted that:

- The Interim Rules of Origin clearly outline the procedure for verifying the authenticity of COOs, which includes retroactive checks by the exporting country's government.
- Domestic investigations and importer statements cannot substitute for the prescribed verification process.
- The Department of Foreign Trade, Thailand, had authenticated the certificates, although it flagged some for non-compliance with the value addition requirement. This misinterpretation by customs authorities led to unwarranted rejection of the certificates.

The Tribunal also referred to several precedents, including RS Industries (Rolling Mills) Ltd v. Commissioner of Central Excise Jaipur-I and Minakshi Exports v. Commissioner of Customs, Jodhpur, which upheld the validity of COOs unless explicitly invalidated by the issuing authority.

Final Decision

The Tribunal set aside the impugned orders, ruling that customs authorities had no justification for discarding the Certificates of Origin. It reiterated that preferential duty claims must be assessed strictly in accordance with the scheme outlined in the relevant notifications and rules.

Implications of the Judgment

1. **Strengthening Trade Agreements**: The decision reinforces the importance of adhering to international trade agreements and the mechanisms established for verifying compliance.
2. **Clarity for Importers**: Importers can rely on Certificates of Origin issued by designated authorities without fear of arbitrary rejection by customs officials.
3. **Accountability of Customs Authorities**: The judgment underscores the need for customs authorities to follow prescribed procedures and avoid overstepping their jurisdiction.
4. **Boost to Bilateral Trade**: By upholding the validity of COOs, the decision promotes smoother trade relations between India and Thailand under the Early Harvest Scheme.

Conclusion

This judgment is a significant step toward ensuring transparency and fairness in the administration of preferential duty schemes. It highlights the importance of respecting international trade protocols and provides much-needed clarity for importers navigating complex customs regulations. As global trade

continues to expand, such decisions play a crucial role in fostering trust and cooperation between trading nations.

Source: CESTAT Mumbai

Disclaimer

Write to us at office@aadrikaalaw.com

Tel: +91-11-4999 2707 I +91-9999005379

www.aadrikaalaw.com

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 90056 OF 2014

[Arising out of Order-in-Original No: MUM-CUSTOM-PAX-COM-06-14-15 dated 20th October 2014 passed by the Commissioner of Customs (CSI Airport), Mumbai.]

Romil Jewelry
125 Niraj Industrial Estate, Opp: Sun Pharma
Off: Mahakali Caves Road, Andheri (E), Mumbai 400093 … ***Appellant***

versus

Commissioner of Customs
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400099 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 90057 OF 2014

[Arising out of Order-in-Original No: MUM-CUSTOM-PAX-COM-06-14-15 dated 20th October 2014 passed by the Commissioner of Customs (CSI Airport), Mumbai.]

Jaymin H Vora
702/A Krishna Kunj Building, Malaviya Road
Vile Parle (E), Mumbai - 400057 … ***Appellant***

versus

Commissioner of Customs
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400099 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 86170 OF 2015

[Arising out of Order-in-Original No: MUM-CUS(AP-II)/ASC/13/2014-15 dated 31st March 2015 passed by the Commissioner of Customs (CSI Airport), Mumbai.]

Samkit A. Sanghavi
M/s Fancy Diamonds India Pvt Ltd
34, Brijkutir Apartment, 68, Rungthalene,
Nepeansea Road, Mumbai 400 006. … ***Appellant***

versus

Commissioner of Customs
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400099 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 86172 OF 2015

[Arising out of Order-in-Original No: MUM-CUS(AP-II)/ASC/13/2014-15 dated 31st March 2015 passed by the Commissioner of Customs (CSI Airport), Mumbai.]

Fancy Diamonds India Pvt Ltd
III Prasad Chambers, Opera House, Mumbai 400 004. … ***Appellant***

versus

Commissioner of Customs
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400099 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85978 OF 2016

[Arising out of Order-in-Original No: MUM-CUS(AP-II)/ASC/25/2015-16 dated 30th March 2016 passed by the Commissioner of Customs (CSI Airport), Mumbai.]

Neelam Jewels
101, Sushmore, Linking Road, Khar (W)
Mumbai 400 052 … ***Appellant***

versus

Commissioner of Customs
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400099 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85981 OF 2016

[Arising out of Order-in-Original No: MUM-CUS(AP-II)/ASC/25/2015-16 dated 30th March 2016 passed by the Commissioner of Customs (CSI Airport), Mumbai.]

Neelam Kothari
101, Sushmore, Linking Road, Khar (W), Mumbai 400 052 … ***Appellant***

versus

Commissioner of Customs
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400099 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 87131 OF 2018

[Arising out of Order-in-Original No: MUM-CUS(VBS)-II/ASC/10/2017-18 dated 19th March 2018 passed by the Commissioner of Customs (CSI Airport), Mumbai.]

Pradeep Kothari
Naik Lane, Sarafa Bazar, Itwari, Nagpur - 440002 … ***Appellant***

versus

Commissioner of Customs
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400099 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 87140 OF 2018

[Arising out of Order-in-Original No: MUM-CUS(VBS)-II/ASC/10/2017-18 dated 19th March 2018 passed by the Commissioner of Customs (CSI Airport), Mumbai.]

Karan Kothari Jewellers Pvt Ltd
Naik Lane, Sarafa Bazar, Itwari, Nagpur - 440002 … ***Appellant***

versus

Commissioner of Customs
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400099 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 89727 OF 2018

[Arising out of Order-in-Original No: MUM-CUSTM-APSC-APP-992/17-18 dated 31st January 2018 passed by the Commissioner of Customs (Appeals), Mumbai – III.]

Laxmi Jewellery Export (P) Ltd
Anand Shipping Center, C G Road, Navrangpura
Ahmedabad - 380009 … ***Appellant***

versus

Commissioner of Customs
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400099 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 89954 OF 2018

[Arising out of Order-in-Original No: MUM-CUSTM-APSC-APP-742/2018-19 dated 20th November 2018 passed by the Commissioner of Customs (Appeals), Mumbai – III.]

Shharad Singhania
91A Tahnee Heights CHS Ltd, Petit Hall
66 Nepean Sea Road, Mumbai - 400006 … ***Appellant***

versus

Commissioner of Customs
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400099 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 89955 OF 2018

[Arising out of Order-in-Original No: MUM-CUSTM-APSC-APP-743/2018-19 dated 20th November 2018 passed by the Commissioner of Customs (Appeals), Mumbai – III.]

Royal Orchid Jewellery (I) Pvt Ltd
91A Tahnee Heights CHS Ltd, Petit Hall
66 Nepean Sea Road, Mumbai - 400006 … ***Appellant***

versus

Commissioner of Customs
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400099 ***…Respondent***

APPEARANCE:

Shri V M Doiphode, Advocate for the appellants

Shri Ashiwni Kumar, Additional Commissioner (AR) for the respondent

WITH

CUSTOMS APPEAL NO: 85005 OF 2019

[Arising out of Order-in-Original No: MUM-CUS-VRM-03/ADJN/APSC/2018-19 dated 28th September 2018 passed by the Commissioner of Customs (CSI Airport), Mumbai.]

Inter Carat Jewelry Pvt Ltd
Unit No. 14, New Nandu Indl Estate, Near Ahura Centre,
Opp: Shanti Nagar, Andheri (E), Mumbai - 400093 … ***Appellant***

versus

Commissioner of Customs
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400099 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85006 OF 2019

[Arising out of Order-in-Original No: MUM-CUS-VRM-02/ADJN/APSC/2018-19 dated 28th September 2018 passed by the Commissioner of Customs (CSI Airport), Mumbai.]

Sucheta Khandwala
Hammer Plus Jewellery Pvt Ltd Unit No. 14,
New Nandu Indl Estate, Near Ahura Centre,
Opp: Shanti Nagar, Andheri (E), Mumbai - 400093 … ***Appellant***

versus

Commissioner of Customs
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400099 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85007 OF 2019

[Arising out of Order-in-Original No: MUM-CUS-VRM-02/ADJN/APSC/2018-19 dated 28th September 2018 passed by the Commissioner of Customs (CSI Airport), Mumbai.]

Hammer Plus Jewellery Pvt Ltd
Unit No. 14, New Nandu Indl Estate, Near Ahura Centre,
Opp: Shanti Nagar, Andheri (E), Mumbai - 400093 … ***Appellant***

versus

Commissioner of Customs
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400099 ***…Respondent***

AND

CUSTOMS APPEAL NO: 85008 OF 2019

[Arising out of Order-in-Original No: MUM-CUS-VRM-03/ADJN/APSC/2018-19 dated 28th September 2018 passed by the Commissioner of Customs (CSI Airport), Mumbai.]

Ranak Patel
Inter Carat Jewelry Pvt Ltd
Unit No. 14, New Nandu Indl Estate, Near Ahura Centre,
Opp: Shanti Nagar, Andheri (E), Mumbai - 400093 … ***Appellant***

versus

Commissioner of Customs
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400099 ***…Respondent***

APPEARANCE:

Shri Anil Balani, Advocate for the appellants

Shri Ashiwni Kumar, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86251-86265/2023

DATE OF HEARING: 01/03/2023
DATE OF DECISION: 29/08/2023

PER: C J MATHEW

By this common order, we dispose off eight appeals of importers and seven appeals of individuals against eight separate orders as the issue arising in these disputes are on the common aspect, and narrow compass, of empowerment accorded to officers of customs to discard 'certificate of origin' and to decide on non-entitlement to benefit of preferential duty claimed on imports of 'gold jewellery'/ 'diamond studded gold jewellery' effected from Thailand under notification no. 85/2004-Cus dated 31st August 2004. We do not propose to detail the specifics of each of the impugned orders that have ordered recovery of differential duties of customs under section 28 of Customs Act, 1962 as well as imposition of penalties under section 114A of Customs Act, 1962 besides imposing penalty under section 112 of Customs Act, 1962 on the individual appellants.

2. It is common ground that the impugned goods had been imported from Thailand, over a span of time and, upon furnishing of 'certificate of origin,' purportedly issued by the authorized person in that country, had been duly cleared under section 47 of Customs Act,

1962. It appears that the validity of the said certificate came under suspicion and, on completion of investigation by the Directorate of Revenue Intelligence (DRI), proceedings were initiated culminating in the orders now impugned before us.

3. The essence of the findings is that the 'certificates of origin' so produced were not acceptable owing to apparent non-compliance with 'value addition' requirement prescribed as threshold for deeming the goods to have originated in that country. The notification prescribing the preferential tariff in question also stipulates that the Interim Rules of Origin, embodied in notification no. 101/2004-Cus (NT) dated 31st August 2004 for facilitating the Early Harvest Scheme pursuant to the Framework Agreement between the Republic of India and the Kingdom of Thailand, is to be complied with. The scheme stipulates that addition - which is the labour/making charges including that of metal loss, processing, profit and any other direct/indirect cost - be at least 20% to be eligible thereon.

4. The case of customs authorities is that the certificates indicating 'changed at 4-digit HS level + 22% LVAC' were not consistent with other documents recovered during the investigation but not furnished with the relevant bills of entry. It was further alleged that the actual addition being less than the threshold had been admitted to in statements obtained under section 108 of Customs Act, 1962 from

representatives of the importers.

5. Mr Anil Balani, Learned Counsel for appellants, contended that customs authorities are bound, just as importers are, by the 'certificate of origin' which, in no case, excludes Thailand as origin of the impugned goods. It was further contended that none of the certificates have been disowned by the designated agency of the Government of Thailand. It was argued that nothing has been placed on record in relation to the ascertained value of the material in the jewellery to establish the stipulated threshold had not been met in the imports. Reliance was placed on the decisions of the Tribunal in *Commissioner of Customs, Hyderabad v. Riddi Siddhi Bullions Ltd [2017 (355) ELT 585 (Tri-Hyd)]*, in *RS Industries (Rolling Mills) Ltd v. Commissioner of Central Excise Jaipur-I [2018 (359) ELT 698 (Tri-Del)]*, in *Minakshi Exports v. Commissioner of Customs, Jodhpur [2018 (359) ELT 689 (Tri-Del)]* and in *BDB Exports Pvt Ltd v. Commissioner of Customs (P), Kolkata [2017 (347) ELT 662 (Tri-Kolkata)]* which are claimed as holding the field over those relied upon in the impugned orders. In addition, it was contended that even if the claimed notification was not extendable to them, other exemptions to which they were entitled had not been considered by the adjudicating authority.

6. Mr VM Doiphode, Learned Counsel for appellants, argued that

the only documentary evidence of origin as prescribed in the Interim Rules of Origin is the certificate issued by the designated authority in Thailand and that the officer of customs referred to in the exemption notification has no option but to proceed with assessments accordingly. It was submitted that the investigation had not obtained any cogent and tangible evidence to counter the certification and neither are importers required to furnish any evidence in support. It was further submitted that the institutional mechanism prescribed in rule 15 of the interim Rules of Origin was the sole available recourse for ascertaining veracity of the certification and, in absence of thereof, it was not open to customs authorities to propose contrarily; he vehemently contested the reliance placed on estimation of 'value addition' by a local expert. He referred to adjudication orders of Commissioner of Customs, Jaipur and of Joint Commissioner of Customs, Jaipur which, having been accepted in statutory review, foreclosed the option of taking a divergent stand *vis-à-vis* the appellants herein. It was also contended that the computation set out in rule 6(d) of Interim Rules of Origin could not be worked out either at the recipient end or by the investigators in the absence of information on the value of the materials procured from outside Thailand.

7. According to Learned Authorized Representative, exhaustive investigations had elicited admission from representatives of the

importers that the certificates did not appear to have been issued after meticulous ascertainment of origin and that they were also not in a position to explain discrepancies between the several recovered documents. According to him, the Department of Foreign Trade, Thailand had, upon retroactive check, attested that only 59 of the 1348 certificates are genuine but even these were not sufficient to evince the goods as originating in Thailand in the absence of compliance by those very exporters to prove origin thereto.

8. Preferential rates are accorded through deliberate policy making and from bilateral/multilateral engagement; these deviations from standard rates are usually attended by comprehensive means of ascertainment and verification. Assigning of rates of duties chargeable on imported goods is a legislative function of the State. As the custodian of ‘ways and means’, it is the government that is responsible and accountable for dilution of such rates in public interest which reflects tax policy or exigency of international cooperation and the latter emerging from calibrated negotiations culminating in trade and economic agreements. While the tax administration may be privy to such engagement, tax administrators are often concerned with process and procedures devised to assess duties on goods without concern for the background, as it were, while such treaty prescriptions prompt appropriate handling in accordance with the framework of the treaty. Thus, though effective rates

emanate under authority of section 25 of Customs Act, 1962, the intent in the notification, if specifically articulated, cannot be discarded. Moreover, that authority vests in the Central Government and deviation from the specifics of a notification would be tantamount to empowering officials of the Central Government to exercise veto over policy formulation. In cases such as those before us now, the issue is restricted to the rate chargeable under the authority of section 12 of Customs Act, 1962 without foraying at all into the classification and valuation aspects. It is of essence that, in such determination, the usual presumptions built into the assessment system are eschewed for strict adherence to the scheme of preferential rate – else policy formulation at the governmental level will be held to ransom by the statics of administration of tax which is averted to the application of rules for classification incorporated in Customs Tariff Act, 1975 and that for valuation in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

9. In this context and *sans* any allegation of collusive arrangement of buyer and seller, statements and other documentation are not really evidentiary reference points for ascertainment of origin particularly in the absence of investigation carried out at supplier end. Furthermore, any perceived lack of rigor in the reporting system at the time of import probably has more to do with negotiation stance which tax administration need not necessarily be privy to or even inclined to

appreciate. At the appellate level, it can clearly be asserted that the contents of the scheme as laid out in notification no. 85/2004-Cus dated 31st August 2004 and in notification no. 101/2004-Cus (NT) dated 31st August 2004 alone must determine the outcome of the appeal.

10. The first of these is unequivocal in prescribing that

> *'....the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the exemption under this notification is claimed are of the origin of Thailand, in accordance with the provisions of Interim Rules of Origin, published with the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 101/2004-Customs (NT), dated the 31st August 2004…'*

be eligibility to avail the benefit. There is, thus, no discretion beyond the mechanism institutionalized in the second notification.

11. Rule 3 of the Interim Rules of Origin is, again, categorical that origin is to be determined only according to compliance with conditions in the Rules and to the satisfaction of

> *'respective Government Authorities designated to issue the Certificate of Origin.'*

It is the case of the appellants that, with furnishing of that certificate, compliance with conditions on the part of the exporter is natural

assumption to be contradicted only in accordance with the mechanism of the Rules. The case of Revenue is that the Department of Foreign Trade, Government of Thailand has not authenticated most of the certificates and the few that were, are also as unacceptable.

12. In terms of rule 4 of Interim Rules of Origin and, on the common ground of neither gold nor diamonds being mined in Thailand, reference to

> *'(b) products not wholly produced or obtained in the territory of the exporting Party provided the said products are eligible under Rule 6 or Rule 7, and Rule 8.'*

therein circumscribes the deeming of Thailand as origin of the impugned goods. Insofar as rule 8 of Interim Rules of Origin is concerned, there is no allegation of non-compliance and the eligibility arises from certification that has been issued as adhering to rule 6 or rule 7 of Interim Rules of Origin. There is also no allegation that the stipulation of 'final process' in rule 6(b) of Interim Rules of Origin have not been complied with. Likewise, there is no allegation pertaining to change in tariff classification. The issue is, thus, all about 'local value added content' which is prescribed as 20% or more.

13. The formula in rule 6(d) is verifiable only upon availability of value of 'non-originating materials' which is markedly absent in the investigation as narrated in the show cause notices and impugned

orders. Ascertainment through domestic agencies or purported admissions in statements recorded by investigation agencies cannot substitute for this essential foundation. Rule 14 of Interim Rules of Origin is again clear on the validity and sanctity of 'certificate of origin' issued by designated Government Authority for determination of eligibility at the importer end.

14. The Operational Certification Procedure is not only elaborate but also sets out details that can lead to rejection of certificate for non-conformity. It is not the case of Revenue that these are a remote possibility. Rule 15 of Interim Rules of Origin is unambiguous about the procedure for retroactive check of the certificates and the circumstances prompting the same. We, therefore, turn to the response of the Department of Foreign Trade, Thailand dated 31st July 2014 that has been referred to in the arguments of Learned Authorized Representative. This is categorical in stating that

> *'Having conducted a cross-examination, we confirm the authenticity of these Forms FTA Thai-India. They were truly issued by the Department of Foreign Trade.'*

while qualifying such certification, relating to 59 of those, thus

> *'Nevertheless, it was determined that the exporter failed to prove within a stipulate time frame, that the authorized consignments of goods were originating in Thailand according to the consent of preferential duty treatment. As a result, we are not in position to recognize that the goods*

> *covered by 59 of Forms FTA Thai-India are qualifying for the origin claim as of the entitlement.'*

It appears that a different construction has been placed on the report *supra* by First Secretary (Economic & Commerce) in communication of Embassy of India, Bangkok dated 13th August 2014 restricting the authentication to 59 of the certificates while a plain reading of the parent report appears to authenticate all the certificates while advising on apparent ineligibility of these 59 certificates for some non-compliance. This misinterpretation by the overseas mission appears to have informed the proceedings culminating in the impugned order. That, however, does not suffice to negate the entirety of the certificates or even the 59 in the absence of details for computation of the 'local value added content' in rule 6 of Interim Rules of Origin.

15. In *re RS Industries (Rolling Mills) Ltd*, it has been held that

> *'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.*

7. In view of the above discussion and analysis, we find that in the presence of valid certificates of origin issued by Competent Authority, the assessing authorities in India are not right in denying the benefit of exemption notification. Accordingly, we set aside the impugned order and allow the appeals.'

and in *re Minakshi Exports* that

'7. We note that the impugned goods were imported from Sri Lanka. Certificates of Origin issued by the competent Designated Authority in Sri Lanka have been filed for claiming preferential treatment for customs duty. The genuineness of the certificates is not in dispute. The certificates are valid and reiterated by the issuing authority even after specific queries were made by the Customs authorities in India. We also note that the similar consignments have been cleared by the Customs authorities extending the preferential rate of duty in similar set of facts. We have perused the impugned order. We note that there is a basic contradiction in the findings recorded. After careful examination of the available details, the Original Authority categorically held that the goods were not of Chinese origin and as such, anti-dumping duty cannot be levied on them, which is otherwise leviable if the goods are of Chinese origin. Having recorded thus, the Original Authority proceeded to hold that the appellant is not eligible for preferential rate though admittedly, the goods have originated from Sri Lanka. In other words, the goods were held to be of not Chinese origin and also not of Sri Lankan origin. In other words, we note that it is clear that the question of country of origin of the present goods is left hanging without a finding by the Original Authority. The goods were neither of Chinese origin nor of Sri Lankan origin. We note that the same is not a tenable position.

8. The Original Authority has apparently exceeded the jurisdiction in going into the aspects of possible classification of inputs used by the supplier in the manufacture of impugned goods in Sri Lanka. Holding that one of the input and the final product fall under the same four digit classification, it was concluded that the provisions of the Rule 7 have not been fulfilled. More specifically, reference was made by the

Original Authority to conditions (b) and (d) of the Rule 7. This is based on the certain reports received from Sri Lankan Customs. The Original Authority while conceding the point that the assessment made by Sri Lankan Customs at the time of import of non-originating goods from China cannot be put to question here in India, proceeded to consider certain reports given by Sri Lankan Customs with reference to classification of one of the non-originating inputs. The classification of such input is not in the domain of the assessing officer in India. No opinion or conclusion can be formed based on the assessment, if any, carried out by Sri Lankan Customs. Denial of concession even when valid certificates of origin were submitted (and reiterated) is not legally tenable.'

16. In *re BDB Exports Pvt Ltd*, it has been held that

'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 10-8-1999 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 'processing' of cloves. It is observed from various provisions of SAPTA Rules and Notification No. 105/99-Cus., dated 10-8-1999 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 assessee's 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. v. 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-à-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.

17. In the light of the factual matrix discussed *supra* and law settled in the judicial decisions *supra*, we find no justification for discarding of the 'certificates of origin' by the adjudicating authority. Accordingly, we set aside the impugned orders and allow the appeals.

(Order pronounced in the open court on 29/08/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*