

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No.40955 of 2016

(Arising out of Order in Original No. 50362/2016 dated 30.9.2016 passed by the Commissioner of Customs, Chennai – II)

Shri Manoj Arjun Gore
Flat No. 4, Javid Manzil, K.K. Ganguly Marg
Juhutara Road, Santa Cruz (West)
Mumbai – 400 049.

Appellant

Vs.

Commissioner of Customs
Customs Commissionerate – II
Custom House, 60, Rajaj Salai
Chennai – 600 001.

Respondent

With

Customs Appeal No.42415 of 2016

(Arising out of Order in Original No. 50362/2016 dated 30.9.2016 passed by the Commissioner of Customs, Chennai – II)

M/s. Calcutta Canvas Co.
No. 119, Audiappa Naicken Street
Sowcarpet, Chennai – 600 079.

Appellant

Vs.

Commissioner of Customs
Customs Commissionerate – II
Custom House, 60, Rajaj Salai
Chennai – 600 001.

Respondent

And

Customs Appeal No.40028 of 2017

(Arising out of Order in Original No. 50362/2016 dated 30.9.2016 passed by the Commissioner of Customs, Chennai – II)

Shri Manoj Arjun Gore
Flat No. 4, Javid Manzil, K.K. Ganguly Marg
Juhutara Road, Santa Cruz (West)
Mumbai – 400 049.

Appellant

Vs.

Commissioner of Customs
Customs Commissionerate – II
Custom House, 60, Rajaj Salai
Chennai – 600 001.

Respondent

APPEARANCE:

Shri T. Chezhiyan, Advocate for Shri Manoj Arun Gore
Shri M.N. Bharathi, Advocate for Calcutta Canvas Co.
Smt.O.M. Reena, Authorized Representative for the Respondent

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Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NOS. 41216-41218/2025

Date of Hearing : 26.05.2025

Date of Decision: 31.10.2025

Per M. Ajit Kumar,

These appeals are filed against Order in Original No. 50362/2016 dated 30.9.2016 passed by the Commissioner of Customs, Chennai – II (impugned order).

2. Brief facts of the case are that officers of Directorate of Revenue Intelligence, Chennai Zonal Unit, received specific intelligence alleging that various Indian importers have been importing PVC flex banners of Chinese origin through Malaysia with the help of one Shri Manoj Arjun Gore of M/s Topaz Plastic Industries (M) SDN BHD, Malaysia and have misdeclared the impugned goods to be of Malaysian origin in order to evade payment of anti-dumping duty (**ADD**). In pursuance of the said intelligence, searches were conducted at several premises of various importers, CHAs and shipping lines, leading to the seizure of documents and the impugned goods stocked in the godown etc. Statements were recorded from the concerned persons and on culmination of the investigation a Show Cause Notice (**SCN**) dated 18.2.2016 was issued for the differential duty in respect of goods imported. Confiscation of goods seized and also cleared were proposed along with penalties. After due process of law, the Ld. Commissioner

of Customs vide the impugned order upheld the proposals in the SCN. Hence the appellants are before this Tribunal.

3. Shri T. Chezian, Ld. Advocate appeared for Shri Manoj Arjun Gore and Shri M.N. Bharathi, Ld. Advocate appeared for M/s. Calcutta Canvas Co. and Smt. O.M. Reena, Ld. Authorized Representative appeared for the respondent.

3.1 Shri M.N. Bharathi, Ld. Advocate submitted that the allegation against the appellant was that they had imported PVC flex banners manufactured in China and routed the same through Malaysia. That the appellant has mis-declared the value and weight of the goods imported and that the Certificate of Origin (**COO**) Certificate, issued by the Malaysian Government was allegedly obtained fraudulently in order to avoid Anti-Dumping duty and to evade payment of appropriate duties of customs. The Ld. Counsel stated that the allegations of manipulating the Certificate of Origin are unfounded and based solely on presumptions without substantive evidence. The COO certificate was issued by the Ministry of International Trade and Industry, Government of Malaysia, an authorized body under Annexure III to Notification No. 189/2009-Cus. (NT). No evidence was shown to indicate the appellant knowingly obtained fraudulent certificates or engaged in misrepresentation. The Ld. Counsel stated that the reliance on electronic evidence in the Show Cause Notice is inadmissible due to procedural lapses and lack of integrity in handling the data. The retrieval of data from seized electronic devices was not conducted in compliance with Section 138C of the Customs Act, 1962. The documents cited in the notice, including emails and other records, show signs of interpolation and cannot be traced to the appellant without

independent verification. He asserted that the declared value of the goods aligns with international market prices, refuting allegations of undervaluation. There was a delay of three years in issuing the Show Cause Notice which weakens the credibility of the investigation, as similar notices against other importers were issued promptly. He relied upon the following case laws in support of his averments;

A) **Ambica Organics v. Commissioner of Central Excise & Customs, Surat 1** [2016 (334) ELT 97 (Tri-Ahmd)] - This case envisages that the Certificate of Origin issued by a recognized authority cannot be disregarded arbitrarily and a valid Certificate of Origin must be accepted unless proven false or forged through proper verification.

B) **Jai Goverdhan Enterprise v. Commissioner of Customs- Mundra**, [2024(5) TMI 476, (CESTAT, Ahmedabad)]- The customs authorities did not follow the procedure prescribed under Rule 9 of the Customs Tariff Rules, 2011, for verifying the certificate of origin. The claim that the goods were of Chinese origin was based only on the bill of lading and statements, which were insufficient without verifying the certificate.

C) **Alfakrina Exports v. Mundra**, [2023(9) TMI 86 (Cestat, Ahmedabad)] - Without following the due procedure to verify the certificate of origin, the authorities could not disregard it based merely on the bill of lading and the authorities had thereby failed to follow the procedure under Rule 9 of the Customs Tariff Rules, 2011 with respect to verification of the Certificate of Origin.

D) **Kiran Kotak and Co. v. Commissioner of Customs, Mundra**, [2024 (389) E.L.T. 203 (Tri.- Ahmd.)] - Procedural lapses by customs authorities can lead to the invalidation of duty demands and penalties. Clear evidence is required to prove suppression or misdeclaration for invoking extended limitation periods or imposing penalties.

E) **D.R. Soneta and Sons v. Commissioner of Customs (General and CFS Mulund), NCH, Mumbai**, [2023 (385) E.L.T. 234 (Tri.- Mumbai)] - This judgment underscored that the authorities must provide substantial evidence to establish the origin of goods when imposing anti-dumping

duties. Indirect evidence, such as pamphlets not directly linked to the consignment, is insufficient to determine the origin of goods.

He further stated that a similar matter arising out of a common investigation, was decided in favour of the parties to the appeal in **M/s. Tech Zone Global Trading Company Vs Commissioner of Customs (Import)** [FINAL ORDER NOS.40502 to 40515/2025, Dated 07.05.2025] and prayed that the impugned order may be set aside and justice rendered.

3.2 Shri T. Chezhiyan, Ld. Advocate for Shri Manoj Arjun Gore submitted that the appellant was working for Topaz Plastic Industries and its group companies, Malaysia. The companies are registered in the government of Malaysia and licensed to manufacture PVC Flex Banners. Show cause notice to the Appellant was issued under Section 112(a) & Section 114AA of the Customs Act, 1962. For imposition of penalty under Section 112, it prerequisites any act, commission or omission, or abetting such act or omission, which renders goods liable for confiscation under 111. No violation of Section 111 alleged against the appellant. Hence imposition of penalty under section 112(a) against the appellant is wholly unjustifiable, illegal and liable to be set aside. Ld Counsel stated that the company is a "Juristic person" under section 140 of the Customs Act, 1962. Thus the company alone is liable to be penalised for the act and leaving the company and imposing the appellant a "Fallguy" who belongs to India came to India is bad in law. He relied upon **Aneeta Hada Vs Godfather Tours and Travels Pvt Ltd** reported in 2012(5) SCC 661 in this regard. Further the Customs Act, 1962 has been amended vide Act 13 of 2018, w.e.f. 28.03.2018,

extending the powers for Customs authorities to make investigation outside India, which categorically means that the powers for investigation or even for imposing penalties were granted only after that date. Thus, there is no such power available by the officers of Customs prior to that date and the appellant was admittedly not in India during the relevant period. Thus, no penalty could be imposed on the appellant as he was not at all in India during all the relevant period. The entire case is based on statement, which has been retracted and is hence not admissible in evidence. The appellant had explained in his bail application how he was forced to sign the statement. Imposing a penalty based solely on a statement, which is retracted, is not sustainable. He relied on the judgment in **Prem Prakash Vs UOI** reported in 2024 (9) SCC 787. Further the adjudicating authority did not consider the request for cross examination of the importers and few officers of Customs, who are in charge of the clearance of consignments. Thus the order suffers with violation of principles of natural justice and hence no penalty is imposable against him. He prayed that for the foregoing reasons, the penalty imposed on the appellant is liable to be set aside.

3.3 Smt. O.M. Reena, Ld. Authorized Representative for the respondent-Revenue took us through the impugned order. She stated that the facts of the case show that the appellants were implicitly involved in the fraudulent activity which would have led to a loss to the exchequer and hence the appeals may be discussed.

4. We have heard the parties and have carefully considered the appeal.

5. The appellant has referred to judgment of this Bench in the case of **M/s. Tech Zone Global Trading** (supra). We find that in the said case a similar matter relating to the import of PVC flex banners of Chinese origin through Malaysia with the help of one Shri Manoj Arjun Gore of M/s Topaz Plastic Industries (M) SDN BHD, Malaysia and Mr Goh, was examined. The issue of the COO certificate being not genuine was raised. The people against whom the allegations were made are the same. The matter was examined at para 6 of the said order and is reproduced below;

6. Whether the COO certificate issued under Free Trade Agreement by another sovereign country needs to be honored and if there are doubts, then, procedure set out in the relevant Rules need to be followed.

6.1 The impugned order states that, "The importers have claimed that department has doubted the genuineness of the Country-of-Origin certificates submitted by different importers and hence the charges in the Show Cause Notice are not sustainable. I find that judicial pronouncements and the irrefutable evidence brought out during the course of investigation, buttress the case of the department." What were this irrefutable evidence has not been discussed. There is nothing more by way of explanation and analysis regarding the COO certificate being improper other than a statement. If it is the alleged movement of goods from China to India that is being additionally referred to, then it should have been clearly stated. The appellant has stated that the COO certificate have not been verified by the department with Malayasia as per the procedure provided in the Rules of 2009, and none of the certificates were found to be false. Further the goods were cleared by Malaysian Customs after verifying all the documents.

6.2 At para 28.2 of the impugned order it is stated that Shri Manoj Gore admitted that he would manage to get Certificate of Origin issued by Malaysian Government Authorities through his and Shri Goh's contacts in the Ministry of International Trade and Industry, Malaysia. Even though such a serious allegation has been made, no attempt has been made to collaborate it. An official certificate, that too covered under the procedure formulated by a Treaty obligation and issued as per the requirements under Rules of 2009, cannot be lightly discarded. A 5 Judge Bench of the Hon'ble Supreme Court in **E. P. Royappa Vs State Of Tamil Nadu & Anr** [AIR 1974 SUPREME COURT 555] held that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are

often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. The Ld. Commissioner should hence have been slow to draw dubious inferences from incomplete facts placed before him on the basis of a mere statement, when no enquiries were made regarding the authenticity of the certificate from the authorities in Malaysia and only a statement by Shri Manoj Gore of the role of Shri Goh in procuring a false certificate etc. The Hon'ble Supreme Court in **Smt. J. Yashoda Vs. Smt. K. Shobha Rani** [AIR 2007 SC 1721], stated the 'Rule of Best Evidence' as the rule which is the most universal, namely that the best evidence, the nature of the case will admit shall be produced. 'So long as the higher or superior evidence is within your possession or may be reached by you, you shall give no inferior proof in relation to it.' Although a strict compliance of the Evidence Act will not apply to a quasi-judicial proceedings, on the scale for evaluation of evidence, a certificate issued by an authorised entity carries more value than an allegation in a third-party statement or of documents that are not correlated to the BE's.

6.3 Revenue has relied on the judgment of the Hon'ble High Court of Gujarat in **Trafigura India Private Ltd Vs UOI** [2023 (12) TMI 196 - GUJARAT HIGH COURT] to support their stand. It has been stated that the substantive provisions of the Customs Act like Section 148 and Section 28 will have dominion over the procedural aspects of the Rules of Origin notified by Rules and Notifications. We find from the facts of the said case that duty exemption was availed by the petitioners by producing the COO certificate where in the Regional Value Content (RVC) was misrepresented. The RVC of the goods was prescribed to be about 35% as per the condition, however, in actuality the RVC was much lesser than 35% and found to have been calculated in fraudulent and misrepresented basis to project the goods accordingly. The Hon'ble High Court held that misrepresentation became suppression which provided solid basis for the Customs authorities to proceed under section 28(4) of the Customs Act. However as discussed above in this case, there is no proof of any wrong doing or manipulation of data or any action by the Malaysian Authorities in issuing a fake certificate. Hence the judgment is distinguished.

6.4 For the reasons discussed we find that revenue has not proved that the impugned goods are not of Malaysian Origin or that the COO is false.

The judgments cited by the appellant and stated at para 3.1 above, further strengthen this legal position. Hence since the department has not found it necessary to find out the authenticity of the COO Certificate from the Malaysian authorities, the same cannot be discarded.

6. Further the SCN heavily depends on documents retrieved through electronic devices, without the certificate issued by a responsible person as per section 138C(4) of the Customs Act 1962 and will hence not be admissible as evidence. We find that the issue relating to the evidentiary value of the records obtained from the computer as per section 138C of the Customs Act 1962 and 65B of the Evidence Act. was examined by this Bench in **M/s. Media Graphics Vs Commissioner of Customs, Chennai** [Final Order Nos. 40925 to 40927/2024, Dated: 23.07.2024]. It held as under:

“9. We also find that the OIO in this regard depends on evidence gathered from electronic devices, data of which has been retrieved under a panchanama. The appellant has stated that print outs obtained from mobile phones and hard disks have not been certified as required under section 138 of CA 1962 and hence such documents are not admissible in evidence. In this connection they have placed reliance on the judgment of the Apex Court in the case of **Anvar P.V Vs P.K. Basheer** [(2014) 10 SCC 473] and CESTAT, in the case of **Junaid Kudia** [2024 (16) Centax 503 (Tri-Bom)] along with **S.N. Agrotech and others** [2018 (4) TMI 856 CESTAT, New Delhi].

10. We find that in **Anvar P.V.** (supra), a three Judge Bench of the Hon’ble Apex Court, held that any documentary evidence sought to be produced from an electronic record under the provisions of the Evidence Act 1872, (Evidence Act) can be proved only in accordance with the procedure prescribed under Section 65B therein. The judgment held that the certificate required under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record. Oral evidence in the place of such certificate will not suffice as Section 65B(4) is a mandatory requirement of the law. The judgment is of relevance to this case as section 138C of the CA 1962 is *pari materia* to the said section 65B of the Evidence Act. Hence a written certificate under section 138C(4) is a *sine qua non* for admissibility of such electronic evidence under the CA 1962 also.

11. Consequent to the judgment in **Anvar P.V.** (supra), some confusion arose over the scope and ambit of Section 65B of the Evidence Act as different views were taken in a few subsequent decisions of Constitutional Courts namely, the Hon’ble Apex Court judgments in **Shahfi Mohammad Vs State of Himachal Pradesh** [(2018) 2 SCC 801] and **Tomaso Bruno Vs State of Uttar Pradesh** [(2015) 7 SCC 178] and the Hon’ble Madras High Court judgment in **K. Ramajyam Vs Inspector of Police** [(2016) CrI. LJ 1542]. The discordance was placed for a resolution before a three-judge bench of the Hon’ble Supreme Court, in **Arjun Panditrao Khotkar Vs Kailash Kishanrao Goratyal**, [AIR 2020 SC 4908 / AIRONLINE 2020 SC 641]. The Hon’ble Court, after examining the said judgments clarified the binding legal position. The Hon’ble Court upheld the **Anvar P.V.**

judgment (supra) while overruling the **Shafhi Mohammed's** judgement (supra) and made it clear that the certificate must be mandatorily provided as a condition under Sec 65B(4) for admissibility of electronic evidence. The Court also overruled its earlier decision in **Tomaso Bruno** (supra) wherein it was held that sections 65A and 65B of the Indian Evidence Act are only procedural provisions, since they are not a complete code on the subject and hence a certificate is not required under Sec. 65B. It also disagreed with the **Ramajyam** judgment (supra) of the Hon'ble Madras High Court, wherein it was held that in lieu of the certificate under section 65B, evidence *aliunde* (elsewhere) can be given by the person who was in possession of the device.

12. WE find that Section 138C of the CA 1962 provides for the admissibility of micro films, facsimile copies of documents and computer print-outs as evidence in a proceedings under the Act without further proof of production of the original. The section differentiates between the original information (primary evidence) contained in the "computer" itself and copies made there from (secondary evidence). The section would not come into play when original documents are being produced in evidence. The admissibility of evidence relating to print outs of electronic records as per the record of the witnesses (mahazar / panchanama) drawn during the search and recovery, of electronic evidence, as per the provisions of of 100 or section 101 of the CA 1962 or of a statement incorporating details of the electronic evidence found, under section 108 of the CA 1962, shall have to yield to section 138C of CA 1962 which is a special provision relating to the admissibility of such documents. This is because **Generalia specialibus non derogant**, a special section will always prevail over the general sections of the Act. Consequently, the evidence in the form of computer print-outs etc. can be admitted, as in the present proceedings, only subject to fulfilling the conditions under section 138C as evidenced by the certificate issued by a responsible person under sub-section (4) of the said section. We find that, the lack of such a certificate is fatal to revenues case and the portion of the order relying on such evidence is liable to be set aside."

In the light of the legal position much of the relied upon documents cannot be admitted as evidence.

7. As regards the valuation of the goods, reliance has been placed on documents/ invoices retrieved from electronic devices which have been found inadmissible as evidence as discussed above. Further in other cases the transaction value has been arrived at by converting the net weight in terms of square meter (SQM) using the factor grams per square meter (GSM) as per Rule 4 of the Valuation Rules 2007. We do

not find any legal parallel to support such a method of valuation which is not as per the said Rules.

8. The order also relies on the similarity of the seals and container numbers as given by the Shipping Liners allegedly in two legs of the cargo movement i.e. from China to Malaysia and again from Malaysia to India. We find that the said goods are covered by the Country-of-Origin Certificate. Having not challenged the COO certificate and further by not showing that the shipments were not the same as the ones covered by the said COO certificates, it cannot be said that the goods did not originate in Malaysia. All these lacunae in the main evidence adduced in the OIO, reduces their probative value in reaching a conclusion even when the standard of proof is preponderance of probability. For the said reasons Revenue has not been able to discharge its burden and prove the allegations made against the importer-appellant.

9. As regards Shri Manoj Arjun Gore, the charge against him is that he in collusion with Indian importers devised an illegal scheme to evade anti-dumping duty by routing goods of Chinese goods through Malaysia. We have seen that the main charge against Shri Manoj Arjun Gore of obtaining fake COO certificates from the Malaysian Authorities were never investigated or followed up by revenue with the Malaysian authorities and hence the burden of proof has not been discharged by revenue. The electronic documents relied upon against the appellant are found to be not admissible as evidence. Hence the question of imposition of penalty upon him does not arise. This being so, we do not feel it necessary to examine the legal issue as to whether the company alone was liable to a penalty or whether the appellant

who was working abroad would come under the ambit of the Customs Act prior to 28.03.2018.

10. Once the case fails on merits, examining the issue of imposition of penalties against the importer; the non-confiscation of goods that were not available, delay in adjudication etc does not arise.

11. In the light of the discussions above the impugned order merits to be set aside and is so ordered. The appellants are eligible for consequential relief, if any, as per law.

(Order pronounced in open court on 31.10.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

Rex