CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20008 of 2023

(Arising out of Order-in-Appeal No. 1742/2022 dated 18.11.2022 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Super Metal House
Suraavi, No. 59, A Main Road,
New Timber Yard Layout, Mysore Road Cross,
Bangalore – 560 026. .....**Appellant(s)**

VERSUS

Commissioner of Customs,
City Customs Commissionerate,
Central Revenue Building, Queens Road,
Bangalore – 560 001. .....**Respondent(s)**

Appearance:

Mr. Rajesh Chander Kumar Rohra, Sr. Advocate with Ms. Sakhee Mehta, Advocate for the Appellant
Mr. M. Sreekanth, Asst. Commr. (AR) for the Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 20715 /2026

Date of Hearing: 04.12.2025
Date of Decision: 02.06.2026

PER : P.A. AUGUSTIAN

The issue in the present appeal is regarding denial of the benefit of Exemption Notification No. 46/2011-Cus dated 01.06.2011 and Notification No. 53/2011-Cus dated 01.07.2011 for preferential rate of duty on import of Tin Ingots.

2. Appellant is an importer /dealer of Non Ferrous Metals and regularly importing Tin Ingots from Singapore from M/s. Crown Exports (S) Pvt. Ltd. Singapore falling under Customs Tariff Item (CTI) 8001 1090. Appellant had imported the above goods vide 8(eight) Bills of Entry by availing the benefit of customs exemption notifications and Rule 3 and Rule 5 of the India-ASEAN PTA Rules. Alleging non-compliance with the above said exemption notification, show cause notice was issued on 27.08.2020 on the ground that the appellant had wrongly availed the benefit of preferential rate of duty. Thereafter, Adjudication Authority as per the Order-in-Original dated 23.07.2021 confirmed the demand along with interest and also imposed penalty. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order dated 18.11.2022 upheld the order passed by the Adjudication Authority. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, Learned Sr. Counsel draws our attention to Rule 3 and Rule 5 of the India-ASEAN PTA Rules and submits that said rules prescribed that product shall be deemed to originate in Malaysia if the AIFTA content is not less than 35% of the FOB value and the non-originating material have undergone at least a change at Customs Tariff Sub-Heading(CTSH) level. In appellant's case, such goods invoiced to it from M/s. Crown Exports were accompanied by County of Origin (COO) Certificates issued by MITI, which is a government agency under the Ministry of Investment, Trade & Industry of the Government of Malaysia. They are responsible for international trade between Malaysian trading partners and international partners including India. Such certificates were issued by MITI in terms of the India-ASEAN PTA Rules [issued vide Notification No.189/2009-Cus (NT) dated 31.12.2009] /Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and Malaysia) Rules, 2011 [issued vide Notification No.43/2011-Cus (NT) dated 01.07.2011 and hereinafter "India-Malaysia PTA Rules"] after due verification and proper examination and only after, inter alia, ensuring

that the origin of the product is in conformity with conditions provided thereunder, such certifications are issued by the MITI based on the written application of the exporter and appropriate supporting documents provided by such exporter, proving that the products to be exported qualify for the issuance of COO certificates.

4. Learned Sr. Counsel for the appellant further submits that the allegation in the show cause notice is prima facie unsustainable since the appellant had disclosed the facts as furnished by the supplier. However, as per the show cause notice, it is alleged that the appellant has resorted to will-full suppression and mis-statement of facts with an intention to evade payment of applicable duties of Customs. Learned Sr. Counsel also submits that as per the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of southeast Asian Nations (ASEAN) and Republic of India Rules, 2009 notified under Notification No. 189/2009-Cus (NT) dated 31-12-2009 prescribes the Operational Certification Procedures (OCP in short) for the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of southeast Asian Nations (ASEAN) and Republic of India Rules, 2009 in Annexure-III of the said Notification. The OCP categorically stipulates that for the purposes of implementing the rules, the operational certification procedures for the issuance and verification of the AIFTA Certificate of Origin and the other related administrative matters, set out therein, shall be followed. Further submits that in case an AIFTA Certificate of Origin is not accepted by the Customs Authority of the importing party, the time frame prescribed as a reasonable period under the aforementioned rules for return of the original AIFTA Certificate of Origin to the Issuing Authority is categorically barred from exceeding 2(two) months. In case where there is a reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the goods in question, a request for retroactive check can be made, however it is again categorically mandated in both the aforementioned rules that the retroactive check

process, including the actual process and the determination of whether the subject goods are originating or not, should be completed and the result should be communicated to the importer within 6(six) months of the date of presentation of the certificate of origin(COO) to the customs authority of the importing Party.

5. Learned Sr. Counsel also submits that the issues are no more *res integra* and considered by the Tribunal in the matter of **M/s. Global Exim Vs. Commissioner of Customs, Mundra reported in [2024) 21 Centax 220 (Tri. – Ahmd.)**], wherein it is held that:-

> *"2.3. He further submits that, before the process of retroactive check regards provided under Article 16. Firstly, the same was not fully complied with. Secondly, exporting country has not held COO invalid, in such circumstances also COO cannot be rejected. In support he placed reliance on the Judgments:*
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> - *M/s. BDB Exports Pvt. Ltd v. CC, Kolkata, 2016 (9) TMI 1087 -CESTAT Kolkata = 2017 (347) E.L.T. 662 (Tri. Kol.)..*
> - *Commissioner of Customs, Hyderabad v. Riddi Siddhi Bullions Ltd, 2017 (355) E.L.T. 585 (Tri.-Hyd).*
> - *R.S. Industries (Rolling Mills) Ltd. v. CCE, Jaipur, 2018 (359) E.L.T. 698 (Tri.-Del).*
> - *Bullion and Jewellers Association v. Union of India, 2016 (335) E.L.T. 639 (Del.).*
> - *Romil Jewelry 125 Niraj Industrial Estate, Opp: Sun Pharma Off: Mahakali Caves Road, Andheri (E), Mumbai 400093 v. Commissioner Of Customs Air Cargo Complex Sahar, Andheri (E), Mumbai - 400099 - 2023-TIOL-839-CESTAT = (2024) 18 Centax 320 (Tri. -Mum.)*
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> *3. On the other hand Shri A R Kanani, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the findings of the impugned order.*

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.

5. Moreover, on the merit also there is no strict compliance of retroactive check and conclusion thereof was made by the Custom Authority. Therefore, no malafide can be attributed to the appellant in the given facts of the present case. Therefore, we are of the considered view, that the demand is hit by the limitation. Accordingly on the ground of limitation alone the impugned order is set aside. Appeal is allowed".

6. Further the issue was also considered by the Tribunal in the matter **M/s. Uni Colloids Impex Pvt.. Ltd. Vs. Commissioner of Customs – [2024 20 Centax 344 (Tri. – Ahmd.)]** and it is held that:-

"40. The upshot of the above analysis of the ASEAN FTA is that where doubts are raised as to the genuineness of the COOs, an elaborate verification procedure is put in place. As far as fraudulent certificates are concerned, they have been separately dealt with under Article 23. In cases of disputes concerning origin determination, classification of products or other related matters, Rule 24 (a) provides that the Government Authorities concerned "in the importing and exporting parties shall consult each other with a view to resolve the dispute, and the result communicated to the other parties". Where no mutually satisfactory solution can be reached through consultations, then in terms of Article 24 (b), the party concerned "may invoke the dispute settlement procedures under the ASEAN-India DSM Agreement"

Origin Rules notified by India.

.....

43. The procedure for verification stated in Rule 16 to the OCP is identical to that provided in the ASEAN-FTA. In other words there stated been a whole scale adoption of the provisions set out in Appendix D to the ASEAN-FTA into the domestic law".

7. Learned Sr. Counsel submits that in the present case, even after producing a valid certificate of origin issued by Competent Authority, the respondent denied the benefit of exemption notification without following the provision of law and therefore the impugned order is unsustainable.

8. Learned Authorized Representative (AR) for the Revenue reiterated the findings in the impugned order and submits that the issue regarding production defective certificates was considered by the Hon'ble High Court of Madras in the matter of **Commissioner of Customs, Tuticorin Vs. M/s.Olam Enterprises India Pvt. Ltd.- (2025) 36 Centax 25 (Mad.)** and held that Tribunal was not correct in treating the defective certificates as valid under AIFTA Rules and denied the benefit of Exemption Notification No.46/2011-CUS. Learned

AR also submitted additional written submissions stating that the wrong availment of duty exemption benefit was noticed only by Depatrment and was not voluntarily brought to the notice of the department by the appellant, with deliberate intention to wrongly avail the benefit of AIFTA and the importer has abused the self-assessment facilitation extended to the consignments. Had the said facts were not detected by the Dept, the same should have gone unnoticed. Thereby, the goods are rightly held liable for confiscation under Section 111(m) and Sec. 111(0) of the Customs Act, 1962 and penalty is also sustainable. As per the investigation conducted by the department, it was confirmed that the condition of "Minimum Value Addition of 35% under AIFTA Rules" was not fulfilled, thereby the appellants were not eligible for the benefits claimed. It is also stated that the Officers of DRI had visited the exporter's premises in Malaysia for investigation. The Appellants have not contested /rebutted the above finding, but have only questioned the investigation agency's power to investigate and file a report and it was beyond the knowledge of the importer, vis-à-vis the exporter (M/s. MSC) resorting to unacceptable costing methodology, found in variance with the Minimum Value Addition of 35% under AIFTA Rules. (Para 5 of Order-in-Appeal). The department by way of Show Cause Notice and Personal Hearings had given sufficient opportunity to rebut the investigation and findings to prove that they have fulfilled the conditions of Notifications/Rules, i.e. there was value addition of over and above 35% as required to become eligible for the exemption. But as per the evidence on record, appellant have failed to do so and the department has got power to verify any benefits/ exemptions claimed by the importers, at any stage and after verification/ investigation, if it is found that the conditions of the exemptions are not fulfilled, duties can be recovered. This power to verify/ investigate is inherent and no special provisions are required. It is for the importers to demonstrate, at all times, that they have fulfilled the conditions. If the importer fails to do so, then they are liable for the consequences including payment of duties/ interest/ penalties. Learned AR also relied on the following judgements:

(i) Commissioner of Cus. (Import), Mumbai Vs. Dilip Kumar & Company (2018 (361) E.L.T. 577 (S.C.) (30-07-2018)

(ii) Eagle Flask Industries Limited Vs. Commissioner of C. Ex., Pune - 2004 (171) E.L.T. 296 (S.C.) [02-09-2004]

(iii) Commissioner of Customs, Tuticorin Vs. Olam Enterprises India Pvt Ltd., (2025) 36 Centax 25 (Mad)

(iv) ICI India Ltd. Vs. Commissioner (2005 (184) ELT 339 (Cal) of Calcutta High Court, confirmed by SC. (2005 187 ELT A31 SC)

9. Heard both sides and perused the records.

10. As regarding the judgment of the Hon'ble High Court of Madras in the matter of **M/s.Olam Enterprises India Pvt. Ltd.** (supra) relied by learned Authorised Representative, we find that in that the issue before the Tribunal was that the vessel M.V. Sioux Maiden departed from Myanmar on 31.03.2014 with the imported goods. However, the invoices included in the certificate are dated 23.05.2014, almost two months later. Once the shipment had already taken place in March, 2014, an invoice dated in May, 2014 cannot be relied upon to prove the origin of goods already shipped. This clear mismatch between the shipment date and the invoice date casts serious doubt on the authenticity of the certificate. Further, the actual supplier to the respondent was M/s. Panasia International Ltd., Dubai, yet the certificate mentions M/s. Concorde Commodities, Singapore. Such omissions and discrepancies cannot be regarded as minor issues, since they fundamentally affect the authenticity and reliability of the certificate.

11. However, the issue in the present appeal is entirely different from the facts of said case. Further the Country of Origin (COO) certificates are the only documentary evidence of origin as prescribed in the India-ASEAN PTA Rules /India-Malaysia PTA Rules and the exemptions Notifications. The officer of customs has no option but to proceed with

the assessments based on such COO. Once such evidence is produced, the same would-be sufficient evidence to prove the origin of the goods, unless the same is discarded or revoked /cancelled by the MITI during the retroactive check provided for under Rule 16 of the India-ASEAN PTA Rules /Rule 9 of the India-Malaysia PTA Rules. This fact is also evident from Rule 13 of the India-ASEAN PTA Rules /Rule 14 of India-Malaysia PTA Rules, which mandatorily requires a claim for preferential tariff treatment to be supported by the COO certificates issued by the government authority in the exporting country (Malaysia) and notified to the other Party (India). Even otherwise, during the relevant period, there was no requirement on the part of an importer to possess sufficient information as regards the manner in which the COO criteria including the Regional Value Content (RVC) specified in the rules of origin in the trade agreement were satisfied, for the purposes of claiming the preferential rate of duty. Such a requirement was made mandatory only with effect from 27.03.2020 with the insertion of Section 28DA of the Act, which provides for the procedure regarding claim of preferential rate of duty or with the introduction of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (hereinafter "**CAROTAR Rules"**) which came into effect from 21.08.2020. Rule 4 thereof, provides that the importer claiming preferential rate of duty shall, inter alia, possess the RVC and submit the same to the proper officer on request. In other words, it was only with the introduction of Section 28DA and the CAROTAR Rules, that the importer was required to possess information regarding the facts behind the issuance of the COO certificates, including as to how the Regional Value Content (RVC) of 35% was worked out in the country of origin. In case where there is a reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the goods in question, a request for retroactive check can be made, however it is again categorically mandated in both the aforementioned rules that the retroactive check process, including the actual process and the determination of whether the subject goods are originating or not, should be completed and the result should be

communicated to the importer within 6(six) months of the date of presentation of the certificate of origin to the customs authority of the importing Party. Considering the facts and decisions relied by the appellant, the impugned order is unsustainable and liable to be set aside.

12. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in Open Court on 02.06.2026)

(P. A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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