IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75636 of 2026

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/ADJN/14/2025 dated 30.04.2025 passed by the Principal Commissioner of Customs (Port), 15/1, Custom House, Strand Road, Kolkata – 700 001, West Bengal)

M/s. Balaji Niryaat Private Limited **: Appellant**
21, Synagogue Street, Third Floor,
Kolkata – 700 001 (West Bengal)

VERSUS

Principal Commissioner of Customs (Port) **: Respondent**
15/1, Strand Road,
Kolkata – 700 001 (West Bengal)

APPEARANCE:

Shri Sudhir Mehta, Senior Advocate,
Smt. Riya Debnath, Advocate
For the Appellant

Shri Subrata Debnath, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75926 / 2026

DATE OF HEARING: 15.07.2026

DATE OF DECISION: 22.07.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been preferred by M/s. Balaji Niryaat Private Limited [hereinafter referred to as the "appellant"] assailing Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/ADJN/14/2025 dated 30.04.2025, passed by the Ld. Principal Commissioner of Customs (Port), Kolkata, whereby the benefit of exemption under Sl. No. 967(I) of Notification No. 46/2011-Customs dated 01.06.2011, claimed by the appellant under the ASEAN-India Free Trade Area Preferential Tariff Agreement (AIFTA), came to be denied resulting in consequent confiscation of the imported consignments under Sections 111(m) and 111(o) of the Customs Act, 1962, giving an option to the importer to redeem the same on payment of redemption fine of Rs.3,00,00,000/- under Section 125 of the Act, confirmation of demand of differential customs duty amounting to Rs.1,43,72,465/- together with applicable interest, besides imposition of a penalty equal to the differential duty amount under Section 114A of the Customs Act, 1962 and a further penalty of Rs.3,00,00,000/- under Section 114AA of the Act.

2. The facts, in brief, are that the appellant, an importer holding a valid Importer Exporter Code (IEC: 0209023601), imported various consignments of "Cold Rolled Stainless Steel Coil" of various dimensions manufactured and supplied by M/s. Bahru Stainless SDN. BHD., Malaysia, under six (06) Bills of Entry bearing Nos. 3006408 dated 22.10.2022, 2995989 dated 21.10.2022, 3233632 dated 09.11.2022, 3799724 dated 19.12.2022, 5049699 dated 15.03.2023 and 5049769 dated 15.03.2023. The imports were accompanied by Certificates of Origin (Form-AI) issued by the competent authorities of the Government of Malaysia and, on the strength thereof, the appellant claimed the benefit of concessional rate of duty under Sl. No. 967(I) of Notification No. 46/2011-Customs dated 01.06.2011 issued pursuant to the ASEAN-India Free Trade Area Preferential Tariff Agreement.

3. It is the case of the Revenue that investigations had earlier been initiated by the Directorate of Revenue Intelligence, Mumbai Zonal Unit, in respect of alleged misuse of preferential duty benefits availed on imports of Cold Rolled Stainless Steel Flat Products manufactured by M/s. Bahru Stainless SDN. BHD., Malaysia, under the relevant notifications governing the ASEAN-India Free Trade Area Rules of Origin. During the course of such investigation, **retroactive** verification of Certificates of Origin was undertaken in accordance with the applicable Rules of Origin by forwarding sample Certificates of Origin to the Malaysian authorities. Since, purportedly, no proper response was forthcoming, it was decided to undertake an on-site verification visit to the manufacturing premises of the overseas supplier in terms of Para 17 of Annexure-III of the Rules of Origin notified under Notification No. 189/2009-Customs (N.T.) dated 31.12.2009 and the corresponding provisions of the India-Malaysia Preferential Trade Agreement Rules, 2011.

4. Pursuant thereto, a team of officers from the Directorate of Revenue Intelligence visited the premises of M/s. Bahru Stainless SDN. BHD., Malaysia. During such verification, the overseas supplier, by communication dated 07.11.2017, declined to furnish the documents sought by the visiting team on the ground of confidentiality and obligations owed to its shareholders after consultation with its parent entity, namely, Acerinox Group, Spain. According to the Revenue, such non-cooperation rendered it impossible to verify the correctness of the Regional Value Content and the origin criteria

reflected in the Certificates of Origin issued in respect of the goods manufactured by the said supplier.

5. Proceeding on the aforesaid premise, and taking note of the provisions contained in the Rules of Origin requiring the furnishing of information relating to the validity of Certificates of Origin upon request by the customs authorities of the importing country, the Department formed a prima facie view that the failure of the overseas supplier to furnish the information sought during verification amounted to non-compliance with the origin verification mechanism contemplated under the ASEAN-India Free Trade Area. The matter was thereafter placed before the Central Board of Indirect Taxes and Customs, which, based upon the verification report, informed that proceedings had been initiated for denial of preferential tariff treatment in respect of Certificates of Origin pertaining to M/s. Bahru Stainless SDN. BHD., and the Malaysian authorities were also requested not to issue further Certificates of Origin to the said supplier until its willingness to cooperate in origin verification was communicated.

6. On the basis of the aforesaid investigation and subsequent communications exchanged between the Department, the Board and the Malaysian authorities, the Revenue entertained the view that the Certificates of Origin (COOs) issued in respect of the goods supplied by M/s. Bahru Stainless SDN. BHD. could not be accepted as genuine for the purpose of extending the preferential tariff benefit as per the existing Notifications for the time being in force. Consequently, it was alleged that the appellant had wrongly claimed exemption under Notification No. 46/2011-Customs and that the Certificates of Origin were liable to be

rejected under Rule 8 of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 read with Section 28DA of the Customs Act, 1962.

7. In the above backdrop, Show Cause Notice No. KOL/CUS/PCC/PORT/GR-4/25/2024 dated 13.11.2024 came to be issued proposing, inter alia, denial of the exemption benefit claimed under Sl. No. 967(I) of Notification No. 46/2011-Customs; recovery of differential customs duty amounting to Rs.1,43,72,465/- together with applicable interest under Sections 28(4) and 28AA of the Customs Act, 1962; confiscation of the imported consignments under Sections 111(m) and 111(o) of the Act; imposition of penalty under Sections 114A and 114AA of the Customs Act, 1962; and other consequential actions.

7.1. The appellant contested the allegations by filing a detailed reply to the Show Cause Notice disputing the proposed denial of preferential tariff benefit as well as the consequential proposals contained therein.

7.2. Upon adjudication, the Ld. Principal Commissioner of Customs (Port), Custom House, Kolkata, vide the impugned Order-in-Original dated 30.04.2025, rejected the defence advanced by the appellant and proceeded to invoke the extended period under Section 28(4) of the Customs Act, 1962, disallowing the exemption claimed under Notification No. 46/2011-Customs dated 01.06.2011 for the impugned six (06) Bills of Entry, confirming the demand of differential duty of Rs.1,43,72,465/- together with applicable interest, confiscating the imported goods with an option to redeem the same on payment of redemption fine of Rs.3,00,00,000/-, apart from imposing penalties under Sections 114A and 114AA of the Customs Act, 1962, in the manner indicated hereinabove.

7.3. Aggrieved by the aforesaid Order-in-Original dated 30.04.2025, the appellant has preferred the present appeal.

8. The Ld. Senior Counsel appearing on behalf of the appellant assailed the impugned order and submitted that essentially, the issue involved in the appeal is to determine the duty liable to be paid by the Appellant for the importation of the goods under six (06) Bills of Entry; that the validity of the Certificates of Origin submitted by them would determine the eligibility of exemption as provided under the Notification No. 46/2011-Customs. The submission of the appellant is that the Country of Origin Certificates submitted by them are genuine and hence the proper officer has correctly determined the duty liability payable by them. It is his stand that as the said assessments have not been challenged by the Department, the assessments attained finality. Thus, the contention of the appellant is that they have rightly paid the applicable duty payable on the goods imported by them and hence the question of re-determining the duty liability does not arise. The Appellant assailed the ground on which the impugned order has rejected the eligibility of exemption claimed by the under the Notification No. 46/2011-Customs. In this regard, the appellant, while reiterating the grounds urged in the appeal, advanced, inter alia, the following submissions in support of their contentions:–

(i) That the present case is neither one of short levy nor of breach of any condition of the exemption notification. It was submitted that the appellant had imported the goods against valid Certificates of Origin (COOs) duly issued by the competent designated authority of the Government of Malaysia, which were accepted by the Customs authorities at the time of assessment and clearance of the imported goods. According to the appellant, there is no allegation that the Certificates of Origin were forged, fabricated or otherwise invalid on the date of import.

(ii) That the entire foundation of the Show Cause Notice rests upon the alleged non-cooperation of the overseas supplier, M/s. Bahru Stainless SDN BHD, during the verification undertaken by the DRI, which, by itself, cannot constitute a valid ground for denying the preferential tariff benefit already extended to the appellant. It was contended that the Show Cause Notice merely refers to internal correspondence and recommendations exchanged between departmental authorities, none of which culminated in any statutory decision suspending or withdrawing the preferential treatment available under the ASEAN-India Free Trade Area (AIFTA).

(iii) That the ASEAN-India Free Trade Agreement is a treaty between sovereign contracting parties and not between individual importers and exporters. Consequently, any dispute relating to the correctness or validity of the Certificates of Origin is required to be resolved strictly in accordance with the dispute resolution mechanism prescribed under the Treaty and the applicable WTO framework, wherein an importer has neither any role nor any control.

(iv) That neither the Directorate of Revenue Intelligence nor the Customs authorities are the designated authorities empowered under the Trade Agreement to suspend or withdraw preferential tariff treatment. Such matters, according to the appellant, lie exclusively within the domain of the competent authorities of the Ministry of Commerce acting through the mechanism contemplated under the Treaty.

(v) That the alleged verification visit undertaken by the DRI suffers from lack of legal authority. It was argued that the Show Cause Notice neither discloses the date of such verification visit nor identifies the competent authority under whose authorization the visit was undertaken in terms of the applicable Rules of Origin. In the absence of compliance with the prescribed treaty mechanism, the appellant contended that the entire investigation lacks legal sanctity.

(vi) That at the time of importation, the assessing authorities neither entertained any doubt regarding the origin of the goods nor sought any further information from the appellant under the applicable Rules of Origin or CAROTAR, 2020. The Certificates of Origin were accepted without objection and the goods were assessed and cleared after extending the exemption benefit under Notification No. 46/2011-Cus. It was therefore submitted that the completed assessments cannot subsequently be reopened solely on the basis of subsequent departmental correspondence.

(vii) That the Show Cause Notice proceeds entirely on assumptions arising from internal correspondence exchanged between departmental authorities and recommendations made by the DRI, none of which possess statutory force nor establish that the Certificates of Origin issued by the Malaysian authorities had ever been suspended, cancelled or declared invalid by any competent authority.

(viii) That significantly, the imports in question were effected during the year 2022, whereas much of the departmental correspondence relied upon in the Show Cause Notice pertains to recommendations made subsequently during the year 2023. It was therefore submitted that subsequent internal communications cannot retrospectively invalidate benefits which had already accrued and stood lawfully extended at the time of import.

(ix) That even otherwise, there exists no material on record demonstrating that either the Government of India or the Government of Malaysia had suspended the preferential treatment available in respect of exports made by M/s. Bahru Stainless SDN BHD or had declared the Certificates of Origin issued by the designated Malaysian authority to be invalid. In the absence of any such action by the competent contracting parties, the denial of exemption is wholly without jurisdiction.

8.1. On the aforesaid premises, the Ld. Senior Counsel for the appellant contended that the impugned proceedings are contrary to the scheme of the ASEAN-India Free Trade Agreement, the applicable Rules of Origin and the Customs Act, 1962, and therefore prayed for setting aside the impugned order in its entirety, with consequential reliefs.

9. The Ld. Authorized Representative of the Revenue appearing before us reiterated the findings recorded in the impugned order and submitted that the same do not suffer from any legal infirmity as contended by the appellant. It was further contended that the investigation conducted by the Department had revealed that the overseas supplier, namely, M/s. Bahru Stainless SDN BHD, Malaysia, had failed to cooperate with the verification exercise undertaken by

the visiting team from India by refusing to furnish the requisite documents relating to the Certificates of Origin, despite specific requests made in terms of Para 17 of Annexure-III of the Rules of Origin notified vide Notification No. 189/2009-Cus. (N.T.) dated 31.12.2009 and Para 10 of Annexure-III of the India-Malaysia Preferential Trade Agreement Rules, 2011. He submitted that owing to such non-cooperation and refusal to furnish documents necessary for verification of the correctness of the value addition and origin criteria reflected in the Certificates of Origin issued by the Malaysian authorities, the visiting team was unable to verify the authenticity of the preferential claims. Consequently, the Central Board of Indirect Taxes and Customs (CBIC), upon consideration of the verification report, vide communication dated 14.03.2023, recommended denial of the preferential tariff treatment in respect of all Certificates of Origin pertaining to M/s. Bahru Stainless SDN BHD. In such circumstances, it was argued by him that the ld. adjudicating authority had rightly denied the exemption claimed by the appellant under Sl. No. 967(I) of Notification No. 46/2011-Cus. dated 01.06.2011 in respect of the six (06) Bills of Entry in question, confirmed the consequential differential duty along with interest, ordered confiscation of the imported goods and imposed penalties in accordance with law. The Ld. Departmental Representative, therefore, prayed that the impugned order be upheld in its entirety and the appeal be dismissed.

10. Heard both sides and perused the documentary evidence presented before us.

11. The principal issue that arises for consideration is whether the preferential tariff benefit claimed by the appellant under Sl. No. 967(I) of Notification No. 46/2011-Cus. dated 01.06.2011, pursuant to the ASEAN-India Free Trade Area (AIFTA), could have been denied merely on the basis of the investigation undertaken by the Directorate of Revenue Intelligence, Mumbai Zonal Unit (DRI, MZU) in respect of the overseas supplier, namely, M/s. Bahru Stainless SDN BHD, Malaysia, and the consequential communications issued by the Board, or not, in the facts and circumstances as obtaining in this case.

11.1 At the outset, it would be apposite to notice the genesis of the dispute. The entire edifice of the Revenue's case traces its origin to an investigation initiated by the Directorate of Revenue Intelligence, Mumbai Zonal Unit, into the alleged misuse of the concessional rate of duty available under the ASEAN-India Free Trade Area in respect of imports of Cold Rolled Stainless Steel Flat Products from M/s. Bahru Stainless SDN BHD, Malaysia, under Notification No. 46/2011-Cus. dated 01.06.2011 and Notification No. 53/2011-Cus. dated 01.07.2011. In furtherance thereof, a verification visit was undertaken to the premises of the said overseas supplier in terms of Para 17 of Annexure-III of the Rules of Origin notified vide Notification No. 189/2009-Cus. (N.T.) dated 31.12.2009 read with Para 10 of Annexure-III of the India-Malaysia Preferential Trade Agreement Rules.

11.2. It is the specific case of the Revenue that during the course of such verification, M/s. Bahru Stainless SDN BHD declined to furnish the documents sought by the visiting team, citing confidentiality obligations, duties owed to its shareholders and other internal commercial considerations. Since Paragraph 18(b) of Appendix-D of Annexure-II of the Rules of Origin for the ASEAN-India Free Trade Area, read with Annexure-III of Notification No. 189/2009-Cus. (N.T.) dated 31.12.2009, contemplates that information relating to the validity of the AIFTA Certificate of Origin shall be furnished upon request of the importing party, such refusal came to be treated by the visiting team as constituting non-compliance with the Rules of Origin. The said position was communicated by the Additional Director General, DRI, Mumbai Zonal Unit, to the Central Board of Indirect Taxes and Customs vide communication dated 26.03.2018, whereafter the FTA Cell of the Board, vide communication dated 14.03.2023, recommended denial of preferential tariff treatment in respect of all Certificates of Origin pertaining to M/s. Bahru Stainless SDN BHD. It is solely on the strength of the aforesaid communications and the verification report that the authorities below have denied the appellant the exemption claimed under Sl. No. 967(I) of Notification No. 46/2011-Cus. in respect of the six Bills of Entry forming the subject matter of the present proceedings.

11.3. Since the impugned proceedings derive their entire genesis from the aforesaid communications dated 26.03.2018 and 14.03.2023, the legality and scope thereof assume considerable significance. The said communications, therefore, necessarily require close scrutiny before the legality of the impugned action can be analysed. For better appreciation of the facts, the said communications dated 26.03.2018 and 14.03.2023 are scanned and reproduced hereinbelow: -

- Communication dated 26.03.2018 issued by DRI, MZU:

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DIRECTORATE OF REVENUE INTELLIGENCE
MUMBAI ZONAL UNIT
13, SIR VITHALDAS THACKERSEY MARG, OPP. S.N.D.T COLLEGE,
NEW MARINE LINES, MUMBAI-400020

Tel: 022-22050191-94(PBX)/22010327 Fax: 022-22010323/116

F.No.:DRI/MZU/F/INT-05/2010/ 2483-to 2485 and 2502 to 2512 March' 2018.

To,
The All Principal Chief/Chief Commissioner of Customs,
Customs Zones,

Sir,

Subject: Verification visit to Malaysia under India-ASEAN FTA – denial of exemption in respect of imports of Cold Rolled Stainless Steel flat products from M/s Bahru Stainless SDN BHD, Malaysia –Reg.,

Your kind attention is invited to this office letter of even no. dated 07.03.2016 wherein this office has informed about the investigation initiated by DRI, MZU Mumbai in respect of misuse of the benefits of concessional duty of FTA imports of Cold Rolled Stainless Steel flat products from M/s Bahru Stainless SDN BHD, Malaysia under notification nos. 46/2011-Cus. dated 01.06.2011 and 53/2011-Cus. dated 01.07.2011 read with notification nos. 189/-Cus. (NT) dated 31.12.2009 and 43/2011 Cus. (NT) dated 01.07.2011 (copy of the letter attached herewith).

2. In the said case, as regards the retroactive check on the true origin, in accordance with Paragraph 16 of Annexure –III of the Rules of Origin (Notification No. 189/2009-Cus. (N.T) dated 31.12.2009), the requests were made on sample basis by sending the Country of origin certificates (Form-AI) to Malaysia. However, owing to lack of any response from Malaysia to the said requests it was decided to request the Malaysian authorities to conduct a visit to the unit of M/s Bahru Stainless SDN BHD in Malaysia in order to verify applicability of the Rules of Origin.

3. Accordingly, a team from DRI, MZU, Mumbai visited the unit of M/s Bahru Stainless SDN BHD, Malaysia to examine the originating criterion and ascertain the value addition of CR SS Flat Products exported, in terms of paragraph 17 of Annexure-III of the Rule of Origin (Notification No. 189/2009-Cus. (N.T) dated 31.12.2009) and Paragraph 10 of Annexure –III of the India Malaysia Preferential Trade Agreement Rules, 2011.

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4. During the verification visit; M/s Bahru Stainless SDN BHD, Malaysia vide their letter dated 07.11.2017 refused to share any documents required for verification. Owing to refusal to share documents for necessary verification, it was not possible to verify the correctness of value addition shown in certificates of origin, issued to Bahru by the Malaysian authorities.

5. Paragraph 18(b) of Annexure-II of the Rules of Origin states that – '*Information relating to the validity of the certificate of origin shall be furnished by the Issuing Authorities upon request of the customs authority of the Importing Party.*' Non-furnishing of information relating to the validity of the Certificates of Origin requested by the customs authority of the Importing Party appears to be a violation of the AIFTA Rules of Origin. Hence, the visiting team in their report on verification visit to Malaysia, submitted to the Board had proposed to consider denial of preferential tariff treatment in respect of all Certificates of Origin issued to M/s Bahru, Malaysia. Based on the recommendation and conclusion of the verification report, the Board vide letter F.No. 456/25/2014- Cus V dated 23.02.2018 concurred with the outcome of the verification visit to M/s Bahru Stainless (copy attached) and also directed to send investigation report for issuance of protectivedemands.

6. In view of the above, it is requested to direct the concerned Commissionerates for taking necessary actions including issue of Show cause notices for the goods imported by the importers under your jurisdiction originating from M/s Bahru by submitting the Country of origin certificates for availing the benefits of the notification nos. 46/2011-Cus. dated 01.06.2011 and 53/2011-Cus. dated 01.07.2011 in respect of finally assessed goods. Assessment of goods provisionally assessed may be finalised on above lines and Bank Guarantees may be encashed.

7. It is also requested to not allow preferential benefits in respect of COOs issued in the name of M/s Bahru Stainless SDN BHD, Malaysia.

8. All the SCNs issued in the case along with recovery, if made may also be forwarded to DRI, MZU, Mumbai.

23/3/18

Yours sincerely,

Shravan 14/3/18.

(Shrawan Kumar)

O/C Additional Director General

Encl. As above

Copy submitted to:

1. The Director (ICD), CBEC, North Block, New Delhi – 110 001. /2484
2. The Commissioner (Customs & EP), CBEC, North Block, New Delhi – 110 001. /2485
3. The Director General, DRI, 7th Floor, D- Block, IP Bhavan, IP Estate, New Delhi 110 002. /2502

- Communication dated 14.03.2023 issued by CBIC, FTA Cell:

सत्यमेव जयते

F. No. 456/06/2014- Cus V(Pt.)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS
DIRECTORATE OF INTERNATIONAL CUSTOMS (FTA CELL)

19A, Fourth Floor, Jeevan Deep Building,
Sansad Marg, New Delhi - 110 001
Dated March 14, 2023

To

The Joint Director (Policy)
Directorate of Revenue Intelligence,
'D' Block, I.P. Bhawan, I.P. Estate,
New Delhi – 110002.

Subject: Import of Stainless Steel products from M/s BAHRU STAINLESS SDN BHD, Malaysia - regarding.

Sir/Madam,

Kind reference is invited to DRI letter bearing reference no. DRI-HQ-Pol/XIIA/18/2016/1724 dated December 26, 2017 enclosing there with a letter bearing reference no. DRI/MZU/F/INT-05/2016/9308 dated December 12, 2017 from DRI, Mumbai Zonal Unit (DRI, MZU), a Report on verification visit to Malaysia for Investigation of Certificates of Origin issued to M/s Bahru Stainless and a letter bearing reference BS/LEG/17/008-11/jyw dated November 07, 2017 from M/s Bahru Stainless SDN BHD (copies enclosed).

1.1. As per the aforementioned Report on verification visit to Malaysia undertaken by DRI, MZU, M/s Bahru Stainless Steel SDN BHD refused to share the documents, which were sought by visiting team from India, citing confidentiality and its duty towards its shareholder after consultation with their Head Quarter in Spain (Acerinox Group).

1.2. As per the aforementioned verification visit report, subsequent to lack of cooperation from M/s Bahru Stainless SDN BHD during verification visit, it was

456/06/2014-Cus.V(Pt.)

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recommended to deny the preferential tariff treatment in respect of all the Certificates of Origin of M/s Bahru Stainless SDN BHD for which verification visit was made.

2. Above mentioned non-cooperation from M/s Bahru Stainless SDN BHD was also informed to Ministry of International Trade and Industry (MITI), Malaysia by OSD (Cus V) vide its letter dated May 10, 2018 and MITI, Malaysia was also informed that CBIC had initiated the proceedings for denial of the preferential tariff benefits in respect of the CoOs issued to the M/s Bahru Stainless SDN BHD.

2.1. Vide the aforementioned letter dated May 10, 2018 MITI, Malaysia was also requested not to issue Certificates of Origin to M/s Bahru Stainless SDN BHD, until they submit their willingness in writing to share information on origin verification under the AIFTA.

3. In this regard, it is informed that, import of stainless steel products under HS Code 72193390,72193490,72193220,72193290,72193320,72193420, 72193590,72199013 and 72202090 from M/s Bahru Stainless SDN BHD by various Indian Importers has come to the notice of FTA Cell and total Assessable Value, Duty paid and Duty Forgone for the period of September 2022 to December 2022 (of which data is available with the FTA Cell) are approximately 179 Crore, 32 Crores and 62 Crores respectively .

3.1. However, no verification request from any field formation pertaining to CoOs issued to M/s Bahru Stainless SDN BHD, Malaysia for export of goods under above-mentioned HS Code from Malaysia to India has been received in the FTA Cell since the introduction of CAROTAR, 2020.

4. Therefore, in the context of Para 2 above, the import data available with the FTA Cell is being enclosed herewith for information and further necessary action, if any.

Yours sincerely,

Signed by Joannes George
Date: 14-03-2023 17:33:31
Reason: Approved
(Joannes George)
Additional Commissioner & OSD, FTA Cell
Directorate of International Customs, CBIC

Enclosures: As above.

Copy for information to:

11.4. Upon a careful reading of the aforesaid communications and the statutory framework governing the Rules of Origin under the ASEAN-India Free Trade Area (AIFTA), we are unable to accept the manner in which the Revenue has proceeded. The Rules undoubtedly provide a mechanism for seeking verification of Certificates of Origin wherever doubt arises regarding the origin criteria. Equally, the Rules contemplate a structured procedure to be followed while examining such doubts. However, what is conspicuously absent is any statutory provision which authorizes the Customs authorities to mechanically deny the benefit of every Certificate of Origin issued by a particular overseas supplier merely because such supplier did not cooperate during a verification exercise. Non-cooperation by itself cannot automatically translate into wholesale invalidation of every Certificate of Origin previously issued in favour of all importers. Such a consequence neither flows from the Rules of Origin nor from the India-Malaysia Preferential Trade Agreement Rules, 2011. Acceptance of such a proposition would amount to reading into the statutory framework a consequence which the legislature itself has consciously not provided. The legislative scheme nowhere contemplates that an isolated act of non-cooperation by an overseas supplier would, ipso facto, extinguish the legal efficacy of every Certificate of Origin issued in its favour, irrespective of the individual transaction or importer concerned. Such an approach, in our considered opinion, travels far beyond the procedure prescribed under the governing Rules and cannot be sustained in law.

11.5. We are equally unable to treat the communication dated 14.03.2023 issued by the FTA Cell, CBIC as a formal adjudicatory determination invalidating every Certificate of Origin issued by M/s. Bahru Stainless SDN BHD. The said communication, in our considered opinion, is merely an administrative correspondence recording the recommendations emanating from the verification exercise. Such a communication, at best, an inter-departmental communication recording the outcome of an investigation and recommending denial of preferential treatment. Such an administrative communication cannot substitute the statutory procedure contemplated under the Rules of Origin nor can it assume the character of a formal adjudicatory determination having the effect of nullifying Certificates of Origin issued by the competent designated authority of another sovereign contracting party. If the Indian Customs authorities entertained doubts regarding the validity of the Certificates of Origin or the origin criteria satisfied by the overseas supplier, the proper course available under the Treaty framework and the Rules of Origin was to pursue the matter in the manner prescribed therein with the competent authorities of the contracting parties. What was impermissible, however, was to adopt a sweeping approach by treating every Certificate of Origin issued in favour of the said exporter as automatically disentitled to preferential treatment without any independent examination of the individual Certificate or transaction. Such a methodology neither finds support from the statutory provisions nor accords with the letter and spirit of the India-Malaysia Preferential Trade Agreement or the Rules of Origin framed thereunder.

11.6. Every Certificate of Origin represents an independent statutory document issued in relation to a distinct import transaction and carries with it a separate legal presumption until lawfully displaced in accordance with the prescribed procedure. Consequently, the validity or otherwise of one Certificate cannot be mechanically determined on the basis of a generalized administrative recommendation issued in respect of an exporter. The Revenue's attempt to reject, through one omnibus communication, all Certificates of Origin issued by a particular overseas supplier, irrespective of the importer, the consignment, the issuing authority or the attendant facts, is legally untenable. Such a blanket approach is wholly alien to the statutory scheme governing preferential trade agreements, which envisages examination of each Certificate of Origin on its own facts and in accordance with the prescribed verification mechanism. Such an approach cannot therefore merit judicial acceptance.

11.7. Furthermore, after examination of the records, we find that the observation recorded at Paragraph 3.1 of the very communication dated 14.03.2023, heavily relied upon by the Department, by itself, completely undermines the case of the Revenue. The same records as under:-

> *"3.1. However,* ***no verification request from any field formation pertaining to COOs issued to M/s. Bahru Stainless SDN BHD, Malaysia for export of goods under the above-mentioned HS Codes from Malaysia to India has been received*** *in the FTA Cell since the introduction of CAROTAR, 2020."*

[Emphasis supplied]

11.8. The above recording, as emanating from the Revenue's own records, strikes at the very root of the impugned proceedings. Once the Board itself records that no verification request from any field formation in respect of the Certificates of Origin issued by M/s. Bahru Stainless SDN BHD had been received after the introduction of CAROTAR, 2020, it becomes wholly incomprehensible as to how a blanket conclusion could nevertheless be reached that all Certificates of Origin issued by the said supplier deserved denial of preferential tariff treatment. The Revenue cannot, in the same breath, acknowledge the absence of transaction-specific verification under the applicable statutory framework and yet proceed to reject every Certificate of Origin issued by that supplier as a matter of course. Such a reasoning, in our view, cannot receive judicial approval. The authorities below have thus proceeded on conjectures and assumptions rather than on any legally admissible determination relating to the Certificates of Origin covering the appellant's imports. Denial of a substantive fiscal benefit under a preferential trade agreement is undoubtedly a serious matter and cannot rest upon such speculative foundations or generalized administrative presumptions. In our view, the impugned approach by the Revenue cannot be sustained in law.

12. Another aspect which merits discussion is that the Certificates of Origin produced by the appellant at the time of importation were issued by the designated issuing authority of the Government of Malaysia in terms of the applicable Preferential Trade Agreement. It is undisputed that the said Certificates of Origin were accepted by the proper officer at the time of

assessment of the respective Bills of Entry and the benefit under Sl. No. 967(I) of Notification No. 46/2011-Cus. dated 01.06.2011 was extended after due assessment under Section 47 of the Customs Act, 1962. Significantly, neither the Show Cause Notice nor the impugned order records any finding that the Certificates of Origin produced by the appellant were forged, fabricated, cancelled or otherwise declared invalid by the competent issuing authority. Even as on the date of hearing of the present appeals, no material has been placed before us by the Revenue to demonstrate that the Certificates of Origin covering the six Bills of Entry have either been cancelled or held to be non-genuine in accordance with law. In the absence of any such determination, the denial of the preferential benefit solely on the basis of subsequent departmental correspondence cannot be sustained.

12.1. We also find considerable force in the submission advanced on behalf of the appellant that the imports in question were effected during the year 2022, whereas the principal communication of the FTA Cell, CBIC recommending denial of preferential tariff treatment is dated 14.03.2023. At the time when the appellant imported the goods, presented the Bills of Entry and produced the Certificates of Origin, the same were accepted without reservation by the Customs authorities and the goods were duly cleared after extending the exemption under the relevant notification. The subsequent exchange of communications between departmental authorities or recommendations proposing denial of benefits cannot, in the absence of statutory authority or any formal determination affecting the validity of the Certificates of Origin themselves, retrospectively deprive an importer of a benefit which had accrued on the basis of documents accepted by the proper officer in accordance with law.

12.2. Equally significant is the fact that the entire dispute projected in the Show Cause Notice essentially arises out of the alleged non-compliance of the obligations flowing from the Preferential Trade Agreement by the overseas supplier. Such obligations, however, emanate from the treaty framework governing the contracting States and the designated authorities functioning thereunder. The appellant-importer is neither a contracting party to the treaty nor is it shown to have exercised any control over the conduct of the overseas supplier during the verification process. Once the importer had produced Certificates of Origin duly issued by the competent authority of the exporting country and the same stood accepted by the Customs authorities at the time of importation, any subsequent dispute concerning compliance with the treaty mechanism necessarily had to be addressed in accordance with the procedure contemplated under the Trade Agreement itself. In our considered view, such issues cannot, in the facts of the present case, be shifted onto the appellant so as to deprive it of the statutory benefit already extended.

12.3. We also find that neither the Show Cause Notice nor the impugned order refers to any decision taken by the competent authorities of the contracting Governments suspending or withdrawing the preferential treatment available in respect of the Certificates of Origin issued by the designated Malaysian authority. During the course of hearing as well, no material was brought to our notice by the

Revenue indicating the existence of any pending dispute between the Government of India and the Government of Malaysia under the dispute resolution mechanism envisaged under the Preferential Trade Agreement or the applicable WTO framework in relation to the Certificates of Origin involved herein. It is pertinent to add that the existence or otherwise of such an inter-governmental dispute is not determinative of the present appeals. Nevertheless, the absence of any such material further reinforces the conclusion that the impugned proceedings have proceeded solely on the basis of internal departmental communications without there being any corresponding determination under the treaty framework itself.

13. Having considered the totality of the facts and circumstances of the case on hand, therefore, we are of the considered view that the impugned Show Cause Notice proceeds on assumptions which are fundamentally disconnected from the appellant's own imports and the Certificates of Origin produced by it. In the absence of any finding that the Certificates of Origin covering the six Bills of Entry were themselves invalid, cancelled, fraudulently obtained or otherwise legally unenforceable, the consequential denial of the benefit under Notification No. 46/2011-Cus. merely on account of the alleged conduct of the overseas supplier during a verification exercise cannot be sustained either on facts or in law. The reasoning adopted by the authorities below, therefore, fails to withstand judicial scrutiny. In view of the foregoing, we hold that impugned demand of differential duty, together with the consequential interest, confiscation

and penalties, are liable to be set aside, being wholly unsustainable in the eyes of law.

14. We also find considerable merit in the contention advanced by the Ld. Senior Counsel for the appellant that the entire demand is barred by limitation. The impugned demand has been confirmed by invoking the extended period under Section 28(4) of the Customs Act, 1962 in respect of imports covered under Bills of Entry dated 21.10.2022, 22.10.2022, 09.11.2022, 19.12.2022 and 15.03.2023, whereas the Show Cause Notice came to be issued only on 13.11.2024. The invocation of the extended period is founded upon the allegation of wilful suppression of facts and deliberate mis-declaration on the part of the appellant. However, upon a careful appreciation of the entire material on record, do not find any basis for invoking the extended period provisions in the case on hand.

14.1. It is trite law that the extended period of limitation can only be invoked upon the Revenue establishing, by cogent and convincing evidence, the existence of fraud, collusion, wilful misstatement or suppression of material facts with an intention to evade payment of duty. The burden to establish these jurisdictional facts rests squarely upon the Revenue. Mere reproduction of the language employed in Section 28(4) of the Customs Act, 1962 or a mechanical allegation of suppression in the Show Cause Notice cannot, by itself, justify invocation of the extended period unless the foundational ingredients contemplated under the statute stand independently established. Equally well settled is the principle that a mere difference in interpretation, a bona fide claim founded upon documents accepted by the

Department, or an alleged omission unaccompanied by a conscious intent to deceive, cannot be elevated to the level of wilful suppression so as to attract the rigours of the extended limitation. Tested on the aforesaid principles, the present case is conspicuously devoid of any material establishing deliberate suppression or fraudulent conduct on the part of the appellant. The appellant had, at the time of importation, produced the Certificates of Origin issued by the designated authority of the Government of Malaysia, claimed the exemption openly under Notification No. 46/2011-Cus. dated 01.06.2011 and filed the Bills of Entry before the proper officer. The Certificates of Origin were accepted during assessment, the benefit was extended after due scrutiny and the goods were permitted clearance under Section 47 of the Customs Act, 1962. As already observed hereinbefore, neither the Certificates of Origin have been shown to be forged or fabricated nor have they been cancelled or declared invalid by the competent authority. The entire dispute has arisen subsequently on account of the alleged non-cooperation of the overseas supplier during a verification exercise undertaken by the Department. Such subsequent developments, wholly beyond the control of the appellant, cannot retrospectively be construed as evidence of suppression or wilful misstatement attributable to the importer.

14.2. In this connection, we further find that the Revenue has not brought on record any evidence whatsoever to demonstrate that the appellant was privy to, or had participated in, any alleged irregularity concerning the overseas supplier or the issuance of the Certificates of Origin. In fact, the entire case of the Department rests upon internal communications exchanged between the DRI and the Board and the alleged conduct of M/s. Bahru Stainless SDN BHD during the verification exercise. There is not even a whisper in the Show Cause Notice indicating that the appellant had knowingly produced false documents or consciously suppressed any material fact before the assessing authority. In these circumstances, the invocation of Section 28(4) appears to have been made as a matter of course, without the existence of the jurisdictional facts necessary for invoking the extended period of limitation. Such a mechanical invocation of the extended period is legally impermissible.

14.3. We are, therefore, of the considered opinion that the Revenue has failed to discharge the burden cast upon it for invoking the extended period under Section 28(4) of the Customs Act, 1962. Consequently, the demand confirmed by resorting to the extended period is unsustainable on the ground of limitation alone. Thus, without prejudice to the findings on the merits of the case as recorded in the preceding paragraphs, we also hold that the impugned demand of differential duty, together with the consequential interest, confiscation and penalties founded thereon, cannot be sustained in law being barred by limitation.

15. In view of the foregoing discussion and findings recorded hereinabove, we hold that the appellant has succeeded both on merits as well as on the question of limitation. Consequently, the impugned Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/ ADJN/14/2025 dated 30.04.2025 cannot be sustained in law and is liable to be set aside and accordingly, the

same stands set aside. We therefore hold that the appellant is entitled to the benefit of the preferential rate of Basic Customs Duty under Sl. No. 967(I) of Notification No. 46/2011-Customs dated 01.06.2011, issued under the ASEAN-India Free Trade Area (AIFTA) Preferential Tariff Agreement, in respect of the imports covered by the six (06) Bills of Entry in question. Consequently, the denial of the said exemption benefit, the confirmation of differential duty along with interest, the order of confiscation of the imported goods with redemption fine, as well as the penalties imposed under Sections 114A and 114AA of the Customs Act, 1962, are hereby set aside.

16. In the result, the appeal is allowed, with consequential relief, if any, in accordance with law.

(Order pronounced in the open court on **22.07.2026**)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd