

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 02

Customs Appeal No. 10185 of 2021

[Arising Out Of OIA-AHD-CUSTM-000-APP-484-20-21 Dated- 22/12/2020 Passed by the
Commissioner of CUSTOMS (Appeals) AHMEDABAD)

SHAKTI INSULATED WIRES PVT LTD

624/2a Gidc Industrial Estate Valia Road
Ankleshwar, Ankleshwar, Gujarat

.....Appellant

VERSUS

C.C.-AHMEDABAD

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

.....Respondent

APPEARANCE:

Shri. Vinay Kansara, Advocate for the Appellant

Shri. Prashant Tripathi, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)**

Final Order No. 10237 /2025

DATE OF HEARING:04.03.2025
DATE OF DECISION:09.04.2025

SOMESH ARORA

M/s Shakti Insulated Wires Pvt Ltd imported "Copper Rod Nominal Dia 8mm with ATSM B49" vide various Bills of Entry during June, 2017 to August, 2017 from a supplier in South Korea. The appellant claimed benefit of "NIL" Basic Custom Duty (BCD) on these goods under India-South Korea Comprehensive Economic Partnership Agreement (CEPA) vide Notification No 152/2009 dated 31.12.2009 read with Notification No 187/2009 -Customs (N.T.) dated 31.12.2009. The goods were classified in Bill of Entries under

CTH 74071020 while the department claimed that the goods should be classified under CTH 74081190. Since goods falling under CTH 74081190 are not exempted from BCD under CEPA notifications, BCD @5% was demanded by the department vide Show Cause Notice dated 19.06.2019. The SCN was adjudicated vide OIO dated 19.11.2019. In an appeal filed by the party, the Commissioner (Appeals) upheld the OIO vide OIA dated 22.12.2020. Hence, this appeal.

2. Broadly, the appellant has relied on the following grounds:

2.1 The Certificate of Origin (COO) benefit is subjected to rules notified vide Notification 187/2009 which provides for a process of verification in case of any doubt. In addition to this notification, the department has also issued instructions/circulars in this regard. CEPA itself contains provisions to verify COO. Circulars are binding on the department and CEPA provisions need to be honored otherwise it will be a violation of Article 51(C) of the Constitution. Instead of rejecting the COO suo-moto, the revenue should have sent it for verification. The crux of his argument is that without verifying COO by following the procedure prescribed in the Notification, Instruction, and CEPA, the department can not reject the benefit of the COO. This argument has another implicit logic that the CTH declared by the appellant is correct since the same has been mentioned in COO which still remains valid and therefore, without verifying COO, CTH cannot be rejected. The goods were in coil form only for ease of transportation and a mode of packaging. The end use of the goods remains that of the rod and therefore, declared classification is correct. Goods are not liable for confiscation under Section 111(m) and 111(0) since there was no misdeclaration (a valid COO was presented and a corresponding CTH was declared) and no benefit was taken in violation of the conditions of the exemption notification. The demand is time-barred. Bills of Entry are of the period June 2017 to August 2017 while the SCN was issued in June 2019. There was no mis-declaration,

suppression of facts, etc and the department could not invoke extended period. Penalty under Section 114A is applicable when there is willful mis-statement of facts, collusion, or suppression of facts. Penalty under Section 114AA can be imposed when there is a forging of documents. No such element is present since a valid COO was submitted. Therefore, penalties are not applicable.

2.2 The Appellant relied upon various case laws as follows:-

- Jai Goverdhan Enterprise V/s CCE-2024 (5) TMI 476 - CESTAT Ahmedabad
- Minakshi Exports, Kailash Chand Agarwal V/s CC, Jodhpur-2017 (11) TMI 555CESTAT New Delhi
- CCE V/s M/s. Wings Electronics & ANR. 2015 (9) TMI 345 Supreme Court
- Kanpur Edibles Pvt. Ltd. V/s CCE-2024 (5) TMI 576 - CESTAT KOLKATA
- R.S. Industries (Rolling Mills) Ltd. V/s CCE, JAIPUR-2017 (11) TMI 1256CESTAT New Delhi
- So-Hum Trading Company And Shri Ajay Midha V/s CCE-2021 (11) TMI 489 CESTAT Kolkata
- BDB Exports Pvt. Ltd., Shri Nirmal Kumar Bhura V/s CCE-2016 (9) TMI 1087 CESTAT Kolkata
- Shirazee Traders V/s CC- Mundra-2024 (1) TMI 781CESTAT Ahmedabad
- Scientific Suppliers V/s CC MUNDRA- 2024 (2) TMI 741-CESTAT Ahmedabad
- Global Exim V/S CC Mundra 2024 (1) TMI 901 CESTAT Ahmedabad
- Goldsmith Food Products V/s CC Mundra-2024 (5) TMI 144-CESTAT Ahmedabad
- DP Chocolates V/s CCE-2024 (8) TMI 266-CESTAT Ahmedabad

- The Principal Commissioner Of Customs, ACC (Import), Mumbai Vs. M/S. Signet Chemicals Pvt. Ltd.- 2022 (9) TMI 1014 (Bombay)
- Sunil Polyplast Ltd. V/s CCE-2002(146) E.L.T. 435 (Tri.-Cal)
- Vima Industrial Plastics V/s Collector of Customs, New Delhi-1997(95) E.L.T. 260 (Tri.-Del)
- Collector of Customs & Excise V/s Lekhraj jessumal & Sons-1996-(82) E.L.T. 162 (S.C.)

3. To the contrary, Revenue submissions are as under:

3.1 Classification of the goods and the exemption under CEPA are two separate issues. The CEPA was operationalized vide Notification 152/2009-Custom dated 31.12.2009 which was further amended vide Notification No 66/2016-Customs dated 31.12.2016. As per the amended notification, following entry was exempted:

Sr No.	Chapter, Heading, Sub-heading or tariff item	Description of Goods	Rate (in percentage unless otherwise specified)
597	7405 to 7407	All Goods	0.00

Thus, the goods falling under sub-headings 7405 to 7407 were exempted vide the above notification. The appellant has classified their goods under Sub-heading 7407 with the description Copper Rods.

3.2 Sub-heading 7407 & 7408 are reproduced as under:

7407	COPPER BARS, RODS AND PROFILES
740710	- Of refined copper:
74071010	--- Electrolytic copper rods or black copper rods
74071020	---Other copper rods

Further, Sub-heading 7408 is reproduced as under:

7408	COPPER WIRE
	- Of refined copper:
7408 11	-- Of which the maximum cross-sectional dimension exceeds
	6 mm:
7408 11 10	---Copper weld wire
7408 11 90	---Other

3.3 Chapter notes 1(d) and 1(1) are reproduced below:

In this Chapter, the following expressions have the meanings hereby assigned to them:

1(d) Bars and rods

Rolled, extruded, drawn or forged products, **not in coils**, which have a uniform solid cross-section along their whole length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygons (including "flattened circles" and "modified rectangles", of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel). Products with a rectangular (including square), triangular or polygonal cross-section may have corners rounded along their whole length. The thickness of such products which have a rectangular (including "modified rectangular") cross-section exceeds one-tenth of the width. The expression also covers cast or sintered products, of the same forms and dimensions, which have been subsequently worked after production (otherwise than by simple trimming or de-scaling), provided that they have not thereby assumed the character of articles or products of other headings.

Wire-bars and billets with their ends tapered or otherwise worked simply to facilitate their entry into machines for converting them into, for example,

drawing stock (wire-rod) or tubes, are however to be taken to be unwrought copper of heading 7403.

1(f)Wire

Rolled, extruded or drawn products, **in coils**, which have a uniform solid cross-section along their whole length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygons (including "flattened circles" and "modified rectangles", of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel). Products with a rectangular (including square), triangular or polygonal cross-section may have corners rounded along their whole length. The thickness of such products which have a rectangular (including "modified rectangular") cross-section exceeds one-tenth of the width.

3.4 Therefore, Chapter note 1(d) makes it clear that if the goods are **in coil form**, they are excluded from the definition of "**Bars and Rods**". On the other hand, Section note 1(f) states that if the goods are **in coil form**, they come under the definition of "**Wire**". Wire has to be classified under Sub-heading 7408 as per note 1(d) reproduced above. Entry No 597 in the Notification 66/2016-Customs exempts the goods which fall under CTH 7405 to 7407. Since correct classification of the goods in question is under Sub-heading 7408, the benefit has been denied by the department. There is no doubt about the fact that the goods were in coil form as has been admitted by the appellant, even in their grounds of appeal. When goods are in coil form, they cannot be classified under sub-heading 7407 since Note 1(d) to Chapter 74 excludes goods in coil form from the scope of "Bars and Rods".

4. The contention of the appellant that verification should have been done as prescribed in Notification No 187/2009-Customs is misplaced. Customs Tariff (Determination of Origin of Goods under the Preferential

Trade Agreement between the Governments of the Republic of India and the Republic of Korea) Rules, 2009 have been notified vide this notification. The rules provide mechanism to verify COO to check whether or not the goods have originated in South Korea. Various criterion such as Regional Value Content (RVC), change in HSN code, etc have been provided which are to be applied to determine whether goods originated in South Korea or not. This further becomes clear that Rule 10 in the Annexure-III to the Rules provide for "Origin Verification". Rule 10 is reproduced as under:

"10. Origin verification.-(1) The importing State party may, at random or when it has 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 or of certain parts thereof, request the Issuing Authorities of the exporting State party for a retroactive check and the Issuing Authorities shall conduct such check in accordance with the following procedure, namely:-

It can be seen clearly that the rule prescribes a verification process when there is a doubt about the origin of the goods. *The phrase "..... as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the goods in question or of certain parts thereof....."* does not need any further elaboration.

4.1 The verification process provided in Rules of Origin is to be resorted to only when there is doubt/dispute about the criterion of origin of the goods or when the COO itself is doubted to be forged/non-authentic. This case is not about whether the goods have originated from Korea or whether RVC criteria were satisfied. Here, the goods were found mis-declared and mis-classified.

4.2 The appellant's reliance on Instruction No 31/2016 dated 12.09.2016 to submit that verification procedure is mandatory in case of any dispute, is misplaced for the simple reason that the instruction is for the purpose of

case regarding the originating criterion which is not the dispute here. Para 2 of the instruction reads as under:

2. Rules of Origin are notified under each of the Agreements which require the importer to, inter alia, make a claim for preferential tariff at the time of importation, and submit a Certificate of Origin (COO) in the prescribed form. The Rules of Origin under the FTAs, as notified under Section 5 (1) of the Customs Tariff Act, 1975, provide for verifying the authenticity of the Certificates of Origin and also the information contained therein. The grounds provided for verification are:

a. In case of a doubt regarding the genuineness of the Certificate of Origin such as any deficiency in the format of the certificate or mismatch of signatures or seal when compared with specimens on record;

b. In case of a doubt on the accuracy of information regarding origin, Le. where a doubt arises on whether the product qualifies as an originating good under the relevant Rules of Origin. In other words, these are cases where there is a reasonable belief that a product

Therefore, the mechanism provided for verification of any document such as Rules of Origin, Instruction or any Circular issued in this regard is regarding originating criterion only which is not under dispute here.

4.3 In the instant case, the issue is not about the origin of goods and the criterion provided for the same. The issue is mis-declaration of goods and thereby, the CTH. Description of Goods and Sub-heading were misdeclared to claim COO benefit. No mechanism or procedure has been provided in either the statute or any of the Rule/Instruction/Circular to correct the description of goods or the CTH in the COO.

4.4 A case on similar facts has been decided by Hon'ble Gujarat High Court. In TRAFIGURA INDIA PVT LTD VS UNION OF INDIA (2023-TIOL-737-HC-AHM-CUS). Hon'ble Court dealt with a similar situation in which guidelines of verification were not followed by the department. It was a case of dispute about Regional Value Content and so the department went through the verification route. The Malaysian authorities did not cooperate and COOs remained valid as per the appellant. However, the DRI

investigation found that RVC was not to that extent which was required to avail the benefit. It means that the COO remained valid but its content was found wrong. This situation is identical in the instant case. The court upheld the decision of the adjudicating authority. Hon'ble Court held that in the light of the situation on investigation, the Show Cause Notice under Section 28 was correctly issued. Hon'ble Court held:

16 The impugned orders are based on and are passed upon application of substantive provisions of the law of the land- the Customs Act, 1962. What could be invoked by the Customs authorities in light of the fact situation obtained upon investigation, was the provisions of section 28 of the Act. Section 28 deals with recovery of duties not levied or not paid or short levied or short paid.

In view of the above, when on investigation i.e. Post Clearance Audit, the department found that the goods were mis-declared, issuing a Show Cause Notice under Section 28 was correct. Verification prescribed under Instructions/Circulars/Rules, etc is for the cases when origin of the goods is under dispute or doubted. In the instant case, origin of the goods is not under dispute.

4.5 The intent of the legislature becomes clear from Section 28DA of the Customs Act, 1962. Although Rules of Origin have been issued under different Trade Agreements, this section provides for administration of Rules of Origin under Trade Agreements. The Section is reproduced as under:

Section 28DA. Procedure regarding claim of preferential rate of duty-

(10) Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:-

(i) the tariff item is not eligible for preferential tariff treatment;

(ii) complete description of goods is not contained in the certificate of origin;

(iii) any alteration in the certificate of origin is not authenticated by the Issuing Authority;

(iv) the certificate of origin is produced after the period of its expiry, and in all such cases, the certificate of origin shall be marked as "INAPPLICABLE".

From the sequential application of this section, it appears that this section is applicable for live consignments, the intent of the legislature becomes pretty clear on a bare perusal of this section. It has been clearly mentioned in this section that the tariff item which is not eligible for preferential tariff agreement, the Certificate of Origin shall be marked as "INAPPLICABLE" and the preferential tariff treatment may be refused without verification. Here the whole basis for exemption was tariff Sub-heading which is a substantive requirement. The most significant eligibility criteria was the Tariff Sub-heading which has to be satisfied to claim the benefit of the notification.

4.6 Country of Origin certificate is no authority decides Sub-heading of the goods. When Chapter Note has clearly excluded goods in coil form from the scope of Bars and Rods, Chapter Note is the only tool to decide Sub-heading of the goods and not otherwise.

4.7 In view of the above submissions, verification of the COO was not required when the goods were found mis-declared. The goods were found mis-declared/mis-classified and so, the COO benefit could not be extended. The department resorted to a substantive provision i.e. Section 28 and this position of law has been upheld in *Trafigura India Pvt Ltd (Supra)*.

5. Following case laws and relevant paras are relied upon by revenue in this regard:

5.1 TRAFIGURA INDIA PVT LTD VS UNION OF INDIA reported in 2023-TIOL-737-HC-AHM-CUS-

18. In light of all forgoing discussion and delineation, the following propositions could be deduced.

(ix) Therefore, AIFTA Article 24 not transformed into legislative measure, cannot have efficacy of law within the State. A contention to

enforce the same does not lie. In the instant case dispute resolution mechanism provided in CEPA has not been transformed into legislative measures. Substantive provision i.e. Section 28 will prevail over CEPA provisions.

(x) Non-observance of mechanism for dispute resolution as per AIFTA Article 24 cannot have the effect and consequence of invalidating the action taken by the Customs authorities under the provisions of the Customs Act. The exercise of powers by them would not render without jurisdiction on such score.

(xi) The petitioners were found upon investigation, to have imported the goods Tin Ingots by producing misleading Certificate of Country Origin, by misrepresenting and suppressing the Regional Value Content, thereby wrongfully claiming preferential treatment in payment of basic Customs duty (0%).

(xii) In the facts of the case, the petitioners could be lawfully subjected to proceedings under Section 28 (4) read with Section 46 (4) of the Customs Act on the ground of non-levy and/or short-levy of basic customs duty in respect of goods imported by them. Extended period of limitation under Section 28(4) of the Act could be rightly invoked on the ground of suppression.

(xiii) The proceedings taken out resulting into interim orders against the petitioners were under the substantive law which were the applicable statutory customs provisions under the Customs Act.

(xiv) Non-compliance of the time limit for investigatory action under the Operational Procedures would not render the action taken under substantive law, for, the procedural aspects stand subordinate to substantive provisions.

5.2 SURYA LIGHT Vs Commissioner of Customs Bangalore-2008 (226)

E.L.T. 74 (Tri. Bang.):

7. On a very careful consideration of the issue, we find that the appellant imported Energy Saving Lamps and claimed the benefit of the Notification in terms of the Indo-Sri Lankan Free Trade Agreement. The Adjudicating Authority has elaborately dealt with the issue in its findings. It is seen that originally when the Bill of Entry was filed, it was covered by Invoice No. 12336 dated 20-10-2003 of M/s. Red Sea Trading Co. Ltd., Hong Kong, which indicated China as the Country of Origin. It is seen that later, this

invoice had been replaced by another fabricated invoice of M/s. Ceyenergy Electronic Co. Pvt. Ltd., Sri Lanka. Even though the investigations have revealed that the Sri Lankan authorities indeed had given the Certificate of Origin, the learned Commissioner had given elaborate reasons for not giving the benefit of Indo-Sri Lankan Free Trade Agreement benefit.....

7.3 The investigations have clearly revealed that the goods are of Chinese origin. Further, the Commissioner has clearly given a finding that in terms of the Origin Rules issued by the Government of India, the goods will not be entitled for the benefit of the exemption under the ISFTA. In view of this, the demand of duty on the impugned item is in order.

This judgment was also upheld by Hon'ble Supreme Court reported in 2015(315)ELTA172(SC).

5.3 ALFA TRADERS Vs Commissioner of Customs, Cochin- 2007 (217) E.L.T. 437 (Tri. - Bang.)

7.1 The appellant is in possession of the Certificate of Origin in respect of the Cloves imported by them. As per their Certificate, the goods are of Pakistan origin. It is the contention of the appellants that as a valid Certificate of Origin has been produced and as the same has not been cancelled, they are entitled for the benefit of the said Notification. Normally, certificates of Origin issued by the authorities of a foreign country are accepted for purposes of concessional rate of duty in terms of Preferential Trading Arrangement. But, at certain times, Certificates are issued, which are contrary to facts. The simple issue here is whether the Certificate of Origin, certifying that the imported Cloves are from Pakistan, is to be accepted or not. It is a matter of general knowledge that Cloves, a kind of spice, are generally produced in Indonesia, Zanzibar and Madagascar and India. Certain agricultural products grow only in certain parts of the world due to various reasons. For example, Mangoes are produced mainly in tropical countries. If somebody claims that the mangoes brought by him are produced in Iceland or New Zealand, it would be very difficult to swallow it.

The above case was affirmed by Hon'ble High Court of Kerala in 2010.

6. Case laws relied upon by the appellant:

6.1 The case laws relied on by the appellant are not applicable since the issue was different. In *Minakshi Exports Vs Commissioner of Customs, Jodhpur-2018 359 (ELT) 689 (Tri-Del)*, Hon'ble Court found an inherent contradiction in findings of the Learned adjudicating authority. On one hand the adjudicating authority held that the goods were of Chinese Origin and on the other hand it held, that the goods were of SriLankan origin. This contradiction led to this judgment. In the instant case, there is no dispute regarding classification of goods.

6.2 The appellant has submitted following case laws to impress that the Board Circulars are binding on the department and so, the Circular issued regarding verification of COO should be followed before rejecting the same:

- *Noble Imports Pvt Ltd Vs Uol-2017(349) ELT 4(AP)*;
- *Sunil Polyplast Ltd Vs CC, Kolkata -2002 146 (ELT) 435 (Tri-Kol)*;
- *Ranjita Agencies Vs CC (Port), Calcutta- 2001 133 ELT 388(Tri-Kol)*;
- *Vima Industrial Plastics Vs CC- 1997 95 ELT 260 (Tri-Del)*

These case laws are not relevant since any Instruction/Circular issued by the department on the COO is for verification when the doubt is with regard to originating criterion. Here, the issue is of mis-declaration/mis-classification of imported goods, and not the originating criterion of such goods. Similarly, in other case law mentioned in para 12.9 of the Grounds of Appeal e.g. *Nakoda Import Pvt Ltd Vs Uol-2017(349) ELT4, et al*, facts were different from the instant case and hence, these are not applicable.

7. The contention of the appellant that the goods were in coil form for ease of transportation and it is a mode of packaging only; and that the classification should be done under Bars and Rods since the goods are going to be sold/used as Rod and not coil, is highly mis-placed. Classification has to be decided as per the Tariff Heading, Sub-heading, Section and Chapter Notes, etc, unless otherwise provided. As explained above, when Chapter

Notes have clearly excluded the goods in coil form from the definition of Bars and Rods; end use has no effect on classification of the goods.

8. Section 111(m) and 111(o) of the Customs Act provides that the goods are liable for confiscation when the goods do not correspond to value or any particular and when any exemption has been claimed in violation of the condition prescribed, respectively. The goods imported were by no means classifiable under Sub-heading 7407. There is a categorical exclusion of goods in coil form from the definition of "Bars and Rods". Thus the goods were mis-declared and mis-classified for which the goods are liable to confiscation under Section 111(m) of the Act. Secondly, the benefit of exemption Notification 66/2016-Customs was available to goods falling under Sub-heading 7407. As the goods could not be classified under Sub-heading 7407, therefore, the same were not eligible for exemption. However, the appellant mis-declared and mis-classified the goods to claim the benefit which means an exemption was claimed violating the condition i.e. the goods should belong to sub-heading 7407. Therefore, the goods were liable for confiscation under Section 111(o) of the Act.

9. The appellant has contended that there was no suppression, willful misstatement or collusion and hence, extended period cannot be invoked and that the demand is time-barred; and that there was no malafide intention and so the extended period cannot be invoked. This contention is misplaced on two counts. First, there was a suppression and secondly, there was an intention also.

9.1 Suppression- The importer has been importing goods regularly. Still, they mis-declared and mis-classified the goods to avail benefit of exemption which came to light only after Post Clearance Audit by the department.

9.2 This case is a re-listed case. In one of the previous hearings, Hon'ble Bench directed to call for the information/documents from the field

formation to ascertain whether assessment or examination was conducted by the Customs officers. Hon'ble Bench also directed to call for the documents such as packing list, invoice, etc which were submitted along with the Bills of Entry. During final hearing of the matter last time, all such information and documents were placed on record.

9.3 The above information/documents clearly indicate two things-First, clearance of the goods in all the Bills of Entry was granted on the basis of self assessment and secondly, goods were not examined in the case of any of the Bills of Entry. This clearly proves that at no point of time, the department was made aware of true nature of the goods. There was no way the department could find out mis-declaration and mis-classification from the documents submitted at the time of import. In this era of self assessment, the most vital piece of information was mis represented before the department. Thus this is a clear cut case of suppression of facts. The very basis of exemption was the shape of the goods which was mis-declared and thus, mis-classified also.

9.4 As regards intention, it has been argued by the learned advocate for the appellant that they declared coil in the packing list and the COO and so, no intention/motive can be alluded to the appellant. Just a bare perusal of these documents proves the intention of the appellant. The intention of hiding actual and vital information while explicitly mis-declaring the goods is proven from the documents. The description of goods in the Packing List is explicitly mentioned as "Copper Rod Nominal Dia 8 mm with ASTM B49". In the detailed packaging of the goods which signifies packages, the appellant mentioned "Coil No". Similarly, in the COO, in the column "description of the goods, including quantity", "Copper Rod Nominal Dia 8MM with ASTM B49; 6CL 25MT 25000KG 25.149KG has been written. As per the appellant, CL is reference to coil here.

9.5 In both the above documents, the description of goods was mentioned explicitly which was misleading and reference to the coil was either cryptic or made in a way that did not reveal true and vital information about the goods. This shows the intention of the appellant. A clever strategy was devised to explicitly mislead the department with some cryptic reference to the coil so that in case they are caught, they can claim the mistake to be without intention.

9.6 In view of the above, both the factors, i.e. suppression of facts and intention behind it are present in the instant case.

10 Though the appellant's intention has been discussed above, in *Trafigura India Pvt Ltd (supra)*, on suppression of facts and invocation of extended period, Hon'ble Court held as under:

16.5 Section 28 of the Customs Act is pari materia with Section 11A of the Central Excise Act. In the context of Section 28 of the Customs Act as it existed prior to amendment by Act 8 of 2011, the Supreme Court, in Aban Loyd Chiles Offshore Limited Vs. Commissioner of Customs, Maharashtra (2006 (200) ELT 370 SC)2006-TIOL-97-SC-CUS, observed that there was material difference between the provisions in the Customs Act and that in Central Excise Act. It was observed that the word 'fraud and words with intent to evade payment of duty occurring in Proviso 2 to Section 11A of the Central Excise Act are missing in Section 28(1) of the Customs Act and the Proviso in particular. It was further observed by the Apex Court that Proviso of Section 28 can be invoked where the payment of duty has escaped by reason of collusion or any willful misstatement or suppression of facts, the Supreme Court stated that, 'so far as misstatement or suppression of facts are concerned, they are qualified by the words 'willful'. The willful preceding the words 'misstatement or suppression of facts' clearly spells out that there has to be an intention on part of the assessee to evade the duty.

16.6 The newly substituted Section 28 of the Customs Act by Act 8 of 11, when closely read brings out different situation. In Sub section (1) of Section 28 it is provided that recovery of duty would be in respect of duties not levied or not paid etc. for any reason other than the reasons of collusion or any willful misstatement or suppression of facts. Therefore the action of recovery under

Section 28 will be in respect of duties not levied or not paid or short levied or short paid or erroneously refunded. The consideration of (a) collusion or (b) any willful misstatement or (c) suppression of facts, are mentioned in Sub section (4) to be the grounds where the notice for recovery is issued invoking the extended period of limitation. What is noticeable is that collusion can be the ground to resort to Sub section (4). Furthermore, and importantly the word 'willful' does not precede the reason of suppression of facts' mentioned in Sub clause (c). In order to invoke Sub section (4) on the ground of suppression of facts, element of willfulness can be said to have been done away with. Suppression of facts simplicitor can be a ground here.

16.7 The suppression of fact is clearly attributed to the petitioners inasmuch as what was required to be disclosed and proof of contents of the Bills of Entry was to be subscribed in form of declaration under Section 46 of the Act. The petitioners had been in regular course of business of import and acted in such course. They were aware about RVC details which was wrongful and suppressive. The importer of any goods thereunder is required to present to the proper officer Bill of Entry for home consumption or warehousing in the manner prescribed in sub-section (2). The Bill of Entry shall include all the goods mentioned in the Bill of Lading or other receipt given by the carrier to the consignee. Under subsection (4), the importer while presenting a Bill of Entry has to subscribe and make a declaration regarding the truth of the contents of the Bill of Entry. In the present case, the Origin Certificate containing the RVC value details was part and parcel of the documents for which truthfulness was declared.

16.8 Sub-section (4) of section 46 reads as under,

"(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed."

16.9 The documents relating to the calculation of RVC remained part of the documents including the Bill of Entry submitted to claim exemption from Customs duty under the Notification No. 46/2011. The petitioners who were engaged in the import in their normal course of business could not have been disclaimed the knowledge that on factual calculation and the criteria adopted, the RVC was wrongly stated. The petitioners were importers engaged in similar import business, were well aware and conversant with the affairs. When the RVC content was calculated on the basis of few months of 2013 cost-sheet, the calculation was evidently erroneous and misapplied, to which the petitioners could not have disclaimed the knowledge. The petitioners were well aware about the nature of details given in relation to RVC, which were wrong. Still

however, they suppressed the fact and claimed the benefit of preferential duty treatment under the Exemption Notification. It could be said that while presenting the documents including the RVC content in the Origin Certificate, there was suppression of facts.

Hon'ble Court further held:

17. The extended period of five years under subsection (4) of Section 28 could indeed be invoked by the authorities since the petitioners were found guilty of suppression of facts regarding RVC content in the Origin Certificate. The suppression is not always concealment of facts. The suppression can take form of suggesting wrong facts and to obtain some advantage, which may not be available upon the disclosure of correct and genuine facts. Suppression may manifest itself in misrepresentation also. In the present case, the misrepresentation became suppression, as the exemption benefit or preferential duty benefit was obtained by putting forth wrong facts, which did not constitute eligibility to earn the exemption from the Basic Customs Duty. By suggesting wrong details and by subscribing untruth, essential conditions regarding RVC was not fulfilled. It partook suppression in eye of law and within the meaning of sub-section(4) of Section 28.

Thus Hon'ble Court held that an extended period can be invoked for suppression of facts only and no willfulness i.e. intention is required to be present for such invocation. Further, the court held that when the facts which were required to be disclosed were not disclosed and this should be construed as suppression of facts. Hon'ble Court also held that suggesting wrong facts and taking some advantage out of it, which may not be available upon disclosure of correct facts is also suppression of facts. The situation is identical in the instant case also. Facts of both the cases being identical, this case law is squarely applicable.

11. As has been discussed above, goods were mis-declared and mis-classified intentionally to avail undue benefit of exemption notification, Penalty under Section 114A has rightly been imposed as this Section provides that when the Show Cause Notice has been issued under Section 28(4) and duty is determined under Section 28(8) of the Customs Act, 1962, a penalty shall be imposed on the notice. Secondly, penalty under Section 114AA is imposable when any document/declaration is submitted intentionally which is false or incorrect in any particular material. In the

instant case, mis-declaration of goods and presenting a factually wrong COO were done intentionally by the appellant. Therefore, the penalty under Section 114AA is rightly imposed.

12. Also, Hon'ble Gujarat High Court upheld the penalties under Section 114A & 114AA in the identical case of Trafigura India Pvt Ltd (Supra). In view of the above submission, the appeal deserved to be rejected.

13. The Appellant in rejoinder relied upon the decision of Polycab Wires (P) Ltd. Vs. C.C, Kandla (Final Order No. A/10478/2024 dated 23.02.2024 to plead its case on limitation.

14. We have gone through the adversarial submissions. We find that the goods which were in the coil form contrary to the definition of "bars and rods" contained in Customs Tariff Act, 1985, which are supposed to be not in coils as culled out above in para 3.1 and 3.2, were still declared as bars and rods and not as a wire by the appellant. The statutory provisions are very clear and so is the shape of imported goods as seen in the photograph as scanned below:-



14.1 The same were produced in coil form and were imported as per the packing list in coils. The statutory provisions being clear, no doubt, even from the literal interpretation, in the minds of anyone could be left that the same were not to be treated 'as bars and rods'. We, therefore, find that the certificate of origin as submitted was incorrect as the HSN is allied in most countries and could not have been different in South Korea. Therefore, with such apparent mistake, benefit has been correctly denied by the department. This is supplemented by the assertion of the party too, when they state that CL in COO refers to coil. We uphold finding in this regard and direct that Tariff Heading 74081190 is appropriate heading as indicated by the department. Therefore, exemption under CEPA notification was correctly denied and BCD @ 5% was correctly demanded, in Show Cause Notice dated 19.06.2019.

14.2. This brings us to the second issue about limitation, we find that the Bills of Entry in the instant case were filed from June 2017 to August 2017 and Show Cause Notice was issued on 19.06.2019. In the instant case, we find that in the relevant Bills of Entry in column of description of the goods, it was not declared that the goods were in coil form which was decisive factor in determining the correct classification. However, we also find that though not declared in the Bills of Entry, which is the most vital document in import, the party has claimed in the packing list that it was explicitly mentioned as "COPPER ROD NOMINAL DIA 8 MM WITH ASTM B 49 and in the detailed packing of the goods, the appellant had mentioned "Coil No". Packing list is reproduced below as specimen:-

RUD-2/5

PACKING LIST/WEIGHT

① Shipper / Exporter TAIHAN ELECTRIC WIRE CO LTD TAIHAN SMART TOWER, 317, BMINDAERO, DONGAN-GU, ANYANG-SI, GYEONGGI-DO, 14055, SOUTH KOREA		② No. & date of Packing list ISI SHAKTI APR. 27, 2017	
③ For account & risk of Messrs/Consignee SHAKTI INSULATED WIRES PVT LTD 6242-A GIDC INDUSTRIAL ESTATE, VALIA ROAD, ANGLESAR 393 002 GUJARAT-INDIA TEL: 0091 2646 223666 FAX: 0091 2646 227575		④ Remarks	
⑤ Notify party SHAKTI INSULATED WIRES PVT LTD 6242-A GIDC INDUSTRIAL ESTATE, VALIA ROAD, ANGLESAR 393 002 GUJARAT-INDIA TEL: 0091 2646 223666 FAX: 0091 2646 227575			
⑥ Port of loading BUSAN PORT IN SOUTH KOREA	⑦ Port of Discharge HAZIRA, INDIA		
⑧ Vessel name ECLIPSE SANAD 1719W	⑨ Sailing on or about MAY. 11, 2017		
⑩ Marks and numbers of Pkgs.	⑪ Description of goods	⑫ Quantity	⑬ Net weight
DESCRIPTION OF GOODS : COPPER ROD NOMINAL DIA 8MM WITH ASTM B48			
	COIL NO	QUANTITY	NET WEIGHT
	170426-049	4.174 MT	4,174 KG
	170426-050	4.142	4,142
	170426-052	4.174	4,174
	170426-053	4.186	4,186
	170426-054	4.174	4,174
	170426-055	4.15	4,150
TOTAL		25 MT	25,096 KG
			25,149 KG
TOTAL : SIX (6) COILS ONLY			
TAIHAN ELECTRIC WIRE CO., LTD. <i>Jun Chai Youn</i> YOUN JUN CHAI / MANAGER			

14.3 The appellant has also mentioned that in the certificate of origin-CL is mentioned in the description portion which refers to coil. The department terms the same as cryptic reference to the coil trying to use the same as an alibi, if there were caught. We find that intention is to be construed with overall facts and circumstances, while the description is not available in the Bills of Entry which is a most reliable document in the International imports, the same however, is available in the packing list and in an cryptic manner in the certificate of origin. It is not coming out from records, as to whether, these documents specially the packing list were submitted by the importer as part of the documents attached with Bills of Entry while seeking assessment by the party or not. We therefore, direct the adjudicating authority/assessing authority to verify this aspect and construe the

limitation, accordingly. If, the description of the goods being in coils was sufficiently reflected in the documents like packing list and the same was provided in the system, then benefit on limitation which is beyond normal period can be permitted to the appellant. However, if the benefit on limitation is decided as not being available to the party, then extended period as well as penalty will sustain, accordingly. With this direction, we remand the matter to the Adjudicating Authority to examine on to limitation and come to the firm conclusion.

15. Appeal is partly allowed by way of remand.

(Pronounced in the open court on 09.04.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Prachi