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

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10046 of 2022- DB

(Arising out of OIA-AHD-CUSTM-000-APP-1041-21-22 dated 01/11/2021 passed by the Commissioner of Customs (Appeals)-Ahmedabad)

JJ POLYPLAST PVT LTD **........Appellant**
(NOW M/S AAACROP EXIM INDIA PVT LTD)
C-206 2ND FLOOR CHATKOPAR INDUSTRIAL ESTATE
LBS MARG GHATKOPAR W
MUMBAI, MAHARASHTRA

VERSUS

COMMISSIONER OF CUSTOMS-AHMEDABAD **......Respondent**
CUSTOM HOUSE,
NEAR ALL INDIA RADIO NAVRANGPURA,
AHMEDABAD, GUJARAT

APPEARANCE:
Shri Aaditya Dave with Ms. Bharvi Javekar, Advocate(s) for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

CORAM:
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10664/2025

DATE OF HEARING: 29.04.2025
DATE OF DECISION: 27.08.2025

SATENDRA VIKRAM SINGH

The present matter relates to M/s. J.J. Polyplast Private Ltd (now M/s AAA Crop Exim India Pvt Ltd) who purchased "225 MT of Marlex High Density Polyethlene Resin HHM TR-144" falling under chapter sub-heading 390102000 from M/s. Aishwarya Plast Exports Pvt Ltd. on High Seas Sale basis and filed bill of entry No. 6747475 dated 13.09.2014 at ICD-Khodiyar. The said goods were exported by M/s. Chevron Phillips Singapore Chemicals Pvt ltd (for short, 'CPSC'). The appellant filed above B/E for availing the benefit of Notification No. 10/2008-Cus dated 15.01.2008 as amended vide Notification No. 53/2015-Cus dated 23.11.2015,

1.1 Import of the said goods by the appellant were subjected to investigation by the officers of DRI in 2018. A committee was formed by CBIC for verification visit of the exporter (M/s CPSC's) premises. The committee in it's report dated 06.04.2018, intimated that the exporter M/s CPSC have filed incorrect declaration before Singapore Customs that the said goods had 95% origin in a single country, in their Certificate of Origin. Subsequently, the exporter M/s CPSC reworked local value-added component in their cost statements and revised it to initially at 45% and then 42.2%. Incidentally, both the cost statements were prepared on the same date and by the same person Mr Jonathan Cheng, the Account Manager of the Exporter. Accordingly, the department had issued show cause notice dated 09.05.2019 proposing denial of FTA benefit, confiscation of imported goods valued Rs. 2,75,79,494/- under Section 111(m) and 111(o) of the Customs Act, 1962 and demanding the differential duty of Rs. 21,01,109/- under Section 28(4) of the Customs Act, 1962 alongwith interest. Penal provisions under Section 112(a),114A and 114AA were also invoked against the appellant.

1.2 The said show cause notice was decided by the adjudicating authority vide order dated 05.02.2020 wherein he denied the FTA benefit to party, confiscated the seized goods but did not impose redemption fine as the goods were not physically available, confirmed the differential duty of Rs. 21,01,109/- alongwith interest and imposed equal penalty under Section 114A and a penalty of Rs. 2,00,000/- under Section 114AA upon the party. Aggrieved with this order, the appellant filed appeal before the Commissioner (Appeals) who vide impugned order dated 01.11.2021 upheld the order of the lower authority. The appellant filed appeal against the impugned order before this Tribunal.

2. The appellant mentioned the following grounds in his appeal: -

2.1 The principles of natural justice have not been followed in this case as the impugned order mentions non-appearance during personal hearing whereas, the fact is that they did not receive any letter for personal hearing. The letter for personal hearing was sent at their Ahmedabad address which is neither registered nor is used by them. No communication has been received by them at their Mumbai address for attending personal hearing.

2.2 The show cause notice has been issued invoking extended period of limitation without having any evidence of wilful mis-declaration in the Country-of-Origin certificate while importing the goods. They cited the decision in the case of Danke Electricals Ltd Vs. Commissioner of C.Ex. & Cus. reported at 2003 (160) ELT 414 and Jyoti Structures Ltd Vs. Commissioner of C.Ex. & Cus. reported at 2004 (167) ELT 226. Authenticity of invoice, order of acknowledgment, bill of lading, certificate of analysis and country of origin certificate by Singapore authorities is not in dispute. They had discharged full burden and therefore, extended period limitation is not invokable.

2.3 The adjudicating authority had accepted the DRI report dated 09.03.2018 and confirmed the demand against them without application of mind. The documents relied upon in the report have not been provided to them. Further, as per revised report local value added content is still more than 40% and therefore, as per Rule 5, the benefit is available to them.

3. During arguments, learned Advocate mentions that investigation in this case was initiated after 4 years of imports. Copies of the crucial documents for making allegations against the appellant were not provided. There is no clear finding that local value content is less than 40% to deny the benefit. There is also no wilful misrepresentation on their part as the benefit was allowed by the authorities at the time of importation, after satisfying themselves with correctness of COO certificate. They had cooperated with the department during investigation and provided all the documents sought for from them. On verification by the department, Singapore Customs had sent COO verification report. There is no allegation that the appellant was involved or connected with in getting fraudulent COO certificate directly or indirectly from M/s. CPSC, and therefore, demand of duty or confiscation of goods is not sustainable in this case. The difference in local value content in two reports/

cost statements of Mr. Jonathan Cheng is due to adoption of two different currencies i.e. one has been worked out on the basis of Singapore Doller whereas the other one is prepared on the basis of US Doller.

4. Learned AR during arguments reiterated the findings of the lower authorities. He mentioned that after verification by the investigating team, the CBIC has denied COO benefit to all the goods from M/s. CPSC to which the exporter did not raise objection. As the importer has misled the department by producing incorrect certificate of origin, the order of the lower authority is legally correct and may be upheld. He relied on the decision of Hon'ble Gujarat High Court in the case of M/s. Trafigura India Pvt Ltd reported at 2023-TIOL-737-HC-AHM-CUS and decision of Hon'ble Apex Court in the case of M/s Munjal Showa Ltd. reported at 2022 (382) ELT 145 (SC) dealing with similar issue.

5. We have heard the rival submissions. Short issue to be decided in this case is whether Country of Origin certificate is valid for availing the concessional rate of duty on imports made by the appellant from M/s CPSC. The appellant's contention is that the department had initiated inquiry after a gap of four years and at that time also, they cooperated in investigation and provided all the data/documents. As they have not mis-declared anything, the extended period is not invokable in this case and the show cause notice is therefore hit by the limitation. On this ground alone, the department's case does not survive. Their another argument is that they have not been provided with copy of the verification report to effectively defend their case and thus, principles of natural justice have not been followed in this case. On the other hand, the department's argument is that when the required conditions of local value component have not been correctly disclosed in the Country of Origin certificate, the same loses its veracity and disentitle the appellant the benefit of COO certificate.

5.1 We find that the department has not given any evidence to show that they had despatched letter(s) of personal hearing to the appellant at their

Mumbai address for attending to personal hearing. There is also no counter from the department side that they had handed over copy of the DRI report dated 09.03.2018 on the basis of which FTA benefit was denied to the appellant and duty was confirmed. There is also no finding of the authorities below on local value content required as per the rules and that found by the verification team. We are of the considered opinion that a clear-cut finding of the adjudicating authority is a must on these contentions raised by the appellant. We therefore deem it fit to remand the matter to the adjudicating authority to give clear findings on the above points and also on invocation of extended period of limitation within a period of 10 weeks from the date of receipt of this order. We also give liberty to the appellant to submit any further document in support of their contention before the Adjudicating authority. With these directions, the matter is remanded to the original authority.

6. Appeal allowed by way of remand.

(Pronounced in the open court on 27.08.2025)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha